A Collection

App. F. IX-4

1936 (July

File No. 10 -

Previous References

Serial Nos.

Later References

168

GENERAL AND REVENUE SECRETARIAT

A Procedure Manuscript.

Serial Nos. of

~~Part B~~ for July 1936

SUBJECT.

Regulation to define and amend law relating to partnership

Govt Resp 88/1936 31-7-36 Rules Compiled

Orders issued under section 4 of the

Indian Partnership Act No VI of 1936

M Iyengar

11/9/36

Serial No.

In British India "The Indian Partnership Act was passed in 1932. This embodies the law relating to partnership in a separate Act. The partnership law was in chapter XI of the Contract. The Special Committee appointed by the Government of India under the chairmanship of Sir Bro. Mitter recommended that the different branches of law relating to contract & torts in the Contract Act should be embodied into separate sections. The first step was to separate the provisions relating to sale of goods & consolidate them in the Indian Sale of Goods Act. The next was the Indian Partnership Act.

2) The special Committee have observed that several important matters relating to partnership are left unnoticed in chap XI of the Contract Act but the development of trade has shown the matters in which legislation is required. The absence of clear & definite rules, Courts have relied on similar provisions in English law.

5977

3) We have passed the Sale of goods Act on the lines of the Indian Act. It is necessary to complement to enact a partnership Act. If approved the High Court will be consulted.

(& Member)

NOTE.—Contn. Sheet.

WD 01955—GPB—22,500—12-6-34

b) 6a 2072 Re 2070

5135

Transmissions Regulations

File No. of 19 General and Revenue Secretariat

Draft Bill

Form 237 2 Mar 35 No 2/35

6 Jan 35

INSPECTION 2 MAR 1935 REV. SECTN

Passed P 4592 A 28.2.35

Ins Cty 3 35

No. 1689 of 1935 from the Registrar, High Court

stating that in the opinion of the High Court it is desirable that the Land Clauses Act be the same as in Br Guiana when there is no special reason to the contrary and suggesting that it may be advisable to ascertain the opinion of the local business men about the working of the provisions of Chap VII of the Act (Registration of Titles) and Ords with view to repeal of Paras 3 and 4 thereof

Form 13

General and Revenue Secretariat

File No. 10 of 193 6

[App. F. III-2

Serial No.

8) In regard to the introduction of legislatic on the lines of the British Indian Partnership Act (1932), the High Court are of opinion that it would be advantageous to have a similar regulation in Mysore as it is desirable that in matters affecting trade and commerce, the law should be uniform. They are not sure that it is desirable to introduce anything similar to Chapter VII Indian Act and suggest that local business men may be consulted about it.

Chapter VII of the Indian Act relates to registration of firms. This is a new chapter inserted in the British Indian Partnership Act and did not exist in the old Indian Contract Act Registration is not made compulsory and non-registration is not penalised as under the English Law. Under the Indian Law, registration is optional and lies entirely within the discre the firm or partner concerned. But certain inducements are provided by way of privilege favour of the firm which registers. Registration of firms would be of advantage and would facilitate business, especially dealings of third parti ith the firm as they will know definitely they are and with whom they are dealing.

9) In the Indian Act, there is a sectm empowers the Governor-General-in-Council to particular areas from the application of thi

NOTE—Contn. Sheet.

4

5135

File No Legis. 10 of 1936

General and Revenue Secretariat

this chapter. Instead of such a provision, we might have in our proposed Regulation a provision empowering the Government to extend the chapter on registration of firms to particular localities in the St... Since the chapter may be applicable xxx to only selected areas at the discretion of the Government and since registration of firms will be entirely optional, there seems to be nothing undesirable in inserting a similar chapter in our proposed Bill. It found useful and the people of any locality want it it may be applied. Otherwise it will lie dormant. The High Court suggest that local businessmen might be consulted about it. As they (had have) no experience as yet of registration of firms, they will not be in a position to advise. The High Court have also suggested that enquiries may be made if it has led to any inconvenience in British India. The provisions as regards registration came into force in British India only from 1st October 1933, and it is too early to expect any opinion as regards its working.

(2) We may insert a similar chapter in our Bill also. As it is only an enabling provision, it is not likely to have opposition. If there should be opposition, we may drop it in the select committee stage.

(3) For orders as to whether a bill on the lines of the British Indian Act may be drafted

(Govt Sec) 2nd Member)

(1) I agree 17/3

(2) I agree 17/3

(3) How may be done 17/3 20.3.36

(4) I agree 20/3

neral and Revenue Secretariat

File No. Legs 10 of 193 6

Serial No.

Bill tride
1st G. Gazette 3.2.1931
S C Report 16.2.1932
Act 2.5.32

(15) There are no copies of the Indian Partnership Act in the Library of approved a few copies may be ordered for as they may be frequently required. for reference

Done 26/3

(16) Six copies may be kept in Office

26/3

To
The Library
note
for immediate
action
Done
26/3
Englishtation
& file retd.
KM
26/3/35

(17) Send with a copy of the Bombay Act.

(18) Suitable changes have been suggested in the wordings for approval After approval a copy will be sent typed

Done
22/4

(19) Preamble, Sections 1 to 5, 58(3), 69(4) may be set typed as slips, & the slips posted in the proper places in the Indian Act. The Act when Act may be adopted. It is unnecessary to have the whole matter typed

C
29/4/35

Reminded today
29/4/35.

To the Library for
putting a copy or
issue another reminder
Done
6/4 no reply is
yet recd. Another
Reminder is
going today
KM
6/5

(20) Send with draft Bill and Statement of General Principles.

Done
29/4

NOTE—Contn. Sheet.

23 APR

SECT

6 1207/35

Law relating to Partnership &c

File No. 10 of 1936. General and Re... Secretariat...

1) Notes with revised draft of statement of General Principles

mm 27/8

2) Draft Partnership Bill & statement of General Principles to be placed before the R.A are for consideration. The necessary changes are indicated in pencil in a copy of the Indian Act.

3) The provisions of chapter VII Registration of Firms may be applied to select areas at such time as may be considered suitable by notification by the Govt. For convenience & uniformity the wording of Sec 56 in the Indian Act has been followed. As soon as the Bill becomes law, a notification may be issued by the Govt to the effect that this chapter shall not apply to any part of Mysore. After gaining some experience & be more accustomed to the Registration, this chapter may be applied to the cities or other important business centres.

4) The statement of general principles with placed, if approved before the R.A at the Dasara session.

Greenlaw

OFFICE OF THE FIRST MINISTER OF COUNCIL 28 AUG 1935 No. 1556

15-14

GENERAL BRANCH 26 AUG 1935 14-25

Returned to be submitted to the Council

First 2nd Reader) 30.8.35 14 29/8/35. 27/8 29/8/35 29/8/35

Final Note by the First Member of Council.

31

Subject:—

Law relating to Partnership in Mysore.

The law relating to Partnership is at present contained in Chapter XI of the Indian Contract Act, 1872, as in force in Mysore.

The inadequacy of the provisions contained therein has been recognised for a long time as many important matters relating to partnership were left unnoticed in Chapter XI. In addition to these omissions, the development of trade and business has shown further matters on which legislation is required. To remove the defects, a separate Act providing for a satisfactory codification of the law was passed in British India in 1932.

It has therefore become necessary to remove these defects in the law in force in Mysore also by enacting a separate measure on the lines of the Indian Partnership Act, 1932.

The High Court who were consulted in the matter have opined that it is desirable that in matters affecting trade and commerce the law in the State should be the same as that in British India.

A draft bill has accordingly been prepared and it has been agreed to by the Dewan and the Second Member of Council. I now solicit gracious sanction of His Highness to place a statement of general principles of the said bill before the Representative Assembly and introduce the bill itself in due course into the Legislative Council.

MEMBER OF COUNCIL.

Bangalore,
4th September 1935.

9

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Law relating to Partnersnip in Mysore.

116

Order.

~~KRW~~

7/9/35

General and Revenue
Secretariat

- 128
19

SUBJECT:-

Law relating to Partnership in Mysore

(*)

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Head-quarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Members of Council for perusal of His Highness' orders before/after issue of orders.* (*Vide Rules* 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

Chief Secretary to Government.

Through the Secretary to Government,
General Department. 9.9.35

959/9/9

FIRST MEMBER OF COUNCIL.

15469/29

SECOND MEMBER OF COUNCIL.

SECTION
16 SEP. 1935
& REV. SECTT.

12/9
General Secy, with Copy

12/9

13/9

NOTE.—Contn. sheet.

35

hubs.

May the statement of
general principles to
[illegible] to the RA
work
[illegible] [illegible]

Is [illegible] to make
some copies of the statement
work
14/9/15 (Hon Sec)

Law relating to Partnerships in Cyprus

D392

11

General and Revenue Secretariat | File No. | of 193 | [App. F. III—2

Serial No.

38) Ten typed copies of statement are sent up. These will be sent to R. & T. Office after approval

Done
16/9
[illegible]

16/9

39) ~~3 Copies taken of file statement~~ Copies may be kindly got attested & sent to this office.

Prosecuting Counsel
BOTV.
17-9-35

17/9

40) Ten copies have been attested by the Officer

Done
17/9

R. & T. Office informed

3 copies taken.
JWS
17/9/35

NOTE—Contn Sheet.

R.H. 19/9

WD 03594—GPB—30,000—18-7-35

1207/35

1/c The Law relating to Partnerships in Guyana

File No. 10 of 1936

General and Revenue Secretariat

4) The Statement of General Principles of the Bill was generally approved in the R.A

5) The Statement of General Principles Notes on clauses may be added, draft for this is tabled. If approved the Notes on clauses will be typed & the whole thing (Bill & Statement of Objts & Reasons & Notes on clauses) sent to Press for being set in type & proofs and Copies for

RECEIVED
24 NOV. 1935
No. 3052

Done 3/10 45 Maybe got typed 6/2/36

TYPING SECTION
GENERAL SECTT.
24. OCT. 1935

45 Typed with typed copy of Notes on clauses

Done 29/10 5) The Partnerships Bill with a statement of Objts & Reasons, and notes on clauses are submitted.

6) The Bill will be published under Rule 8. (1st Reading)

OFFICE OF THE
FIRST READING
13 NOV. 1935
3207

6/11/35

7) [illegible]

13/11

Done 13/11

Published

6/11/35

Mo 14-11-35

Done 15/11

Read 16/11/35

(Sd) A.C. O'Brien

1207/13

General and Revenue Secretariat | File No. 10 of 1936. | [App. F. III—2

Serial No.

Three copies of the Bill together the statement of objects and reasons may kindly be put as usual for further necessary action being taken

Prot. Br. a.c)

16/11/35

The matter is in Print & matter standing in the Press & advance copy has been sent to Translation Section. The original sent in the file may be sent to Press right back. The matter being long typed copies cannot be made now.

Bom 18/11

The d.c. Office) 18/11

Proof copy of the Bill has been taken

Prot. Br.

19/11/35

Proof copy of Bill sent on 18.11.35

Bom 19/11

The Bill has been published in the Gazette of 16.11.35 and a copy is herewith put up for perusal.

The following motions are also suggested for having included in the agenda for the next meeting

NOTE.—Contn. Sheet.

WD 03591—GPB—30,000—13-7-35

Laws Re Partnerships in Cyprus. 3271/35 P&C

File No. D 1029 of 193 .

General and Revenue Secretariat

of the Legislative Council

(1) Motion that the Bill published under rule 8 of the Rules of Business be read in Council

(2) Motion that the Bill be referred to a Select Committee

Mover: The First Member of Council

Seconder: The General Rep. for Evkaf

The Personnel of the Select Committee is also for orders

Sned

GENERAL SECRETARIAT
3 DEC. 1935
5 8

This may be adopted at the time of discussion in Council

Done 2/12/35 (Member) mw 3/12 (1st Member) Ey 4/12 Ey 4/12/35

OFFICE OF THE FIRST MEMBER
3 DEC. 1935
No. 3873

J/12

4/12

Rm 4/12

4/12

(Office for minor note)

MSK 5/12/35

noted and pts to Prot. Br. a.c

6/12/35

OFFICE OF THE SECRETARY
5 DEC. 1935
REPLY
LEGISLATIVE COUNCIL

Land Re - Partnership Bill Mysore

327 L

15

General and Revenue Secretariat | File No. Leg. 10 of 193 6 D 1236 | [App. F. III—2

Serial No.

The Bill was read in Council at the meeting held on 18.12.35 & refd to a Select Committee (Vide proceedings at Flag N.

The file will be sent to L.C. Office (w Extract of Proceedings re discussions on this Bill

Done 20/12 — 21/12

Extract from the L.C. proceedings relating to the discussion on the Bill is placed in the file.

Section Officer 6.1.36 — Protn Off

Submd. for orders as regards the date of the S.C. meeting.

Sec 6/1/36

Hon'ble submitted in the hearing of Febry

Secy B (3-2-36)

Recd. for orders.

Sec 11-1-36.

Submitted for fixing date of Select Committee Meeting (8 Members)

11/1/36

Friday, 13th March - 1 P.M. has been approved by the Members.

13/2

13/2

NOTE.—Contn. Sheet.

WD 0594—GPB—38,000—18-7-35

16

Partnership Bills

File No. Leg of 1936.

General and Revenue Secretariat

See 18/2/36

[signature] 4/18/2

EIRE
19 FEB 1936
GENL & REV. SECTT.

The date of the meeting is changed to 7th April & the revised draft is for order.

25 MAR 1936
GENL & REV. SECTT.
4-45

See 25/3/36

[signature]

4/25/3/36

Issued to 6422 & 29 of 27/3

The S.C. met on 7th inst. and considered the Bill. Their Report is placed on the file. The Bill has been slightly amended in two sections & the S.C. have said that it need not be reprinted. The Bill as amended would however have to be printed. It is not to mention Select Committee stage of the Bill as amended

See 8/4

The report of the S.C. may be published & further action may be taken

[signature]

See 8/4/36

No L.C. observations necessary

Partnership Bill.

General and Revenue Secretariat | File No. 1B of 193 6 | [App. F. II]

Serial No.

Action has been taken separately to publish the S.C. Report and get spare copies of the amended Bill printed.

Prot: Br: all cmpts)

9.4.36

The S.C. report has been published & copies thereof are understood to have been sent to members.

The following motions may be made at the ensuing Session of L.C.:-

(a) a motion that the Bill & the Report of the Select Committee thereon be taken into consideration

(b) a motion that the Bill as amended be passed

It is a point for consideration if any amendment should be made to Clause 56(1) as the section by adding the words "and the said provisions shall not apply unless so extended as aforesaid".

Submitted for orders.

4/6/36.

NOTE—Contn Sheet.

WD 03594—GPB—30,000—13-7-35

18 Partnership Bill

3 271/P

File No. of 193 General and Revenue Secretariat

Partnership

The motions may be approved

Sec extends the Regulations to the whole of the State from the date on which it comes into force. By Sec 56 it is intended that chapter VII should apply only to such portions of the State & from such date as the Govt may notify. In order that there may not be an apparent conflict between Sec 1 and Sec 56, it seems to be necessary to add the words " and the said provisions shall not apply unless so extended " at the end of Sec 56

If approved a formal verbal amendment as above will be put up as a motion

(1st Member) G 5/6/36

JPS 5/6

OFFICE OF THE FIRST PARLIAMENTARY COUNSEL 5 JUNE 1936 9035

G 5/6/36

The following motions

(a) Motions that the Bills "and the Reports of the Select Committee be taken etc & amendments

P.S. 4/36-37

3711 D 2051

Partnership Bill

General & Revenue Secretariat. Legis File No. 10 of 1936 [App. F. III–2

Serial No.	
	(b) That in clause 56 as amended by the Select Committee the words "and the said provisions shall not apply unless so enlisted" be added at the end
	(c) In addition that the Bill as amended be passed by the Council with, if approved by the Legislature the following
	Sd 6/6.
	To L. & Opinion Law notes thereon
	Sd 6/6
	The motions have been noted and the file put to Print. (J.C)
	11.6.36
	The Bill was passed at the last L.C. in June with the amendment to S.56.
	Sanction of Govt. to this was accorded on 14th June 1936
	Said with a draft for publishing the Rules
	Sd 29/7
	Govt. to note & order publication

TYPING SECTION, 27 JUL 1936 GENERAL SECTT.

Legis 18-36

Prompt

NOTE—Contn. Sheet

D.L.S: 1st copies issued

File No. of 193

General and Revenue
Secretariat

General and Revenue Secretariat | File No. | of 193 . | [App. F. III—2

Serial No.

Note on the Partnership Bill
as amended

(1st Reading) 4/3/25

WD 03594—GPB—30,000—13-7-35

Bill to define and amend the Law relating to Partnership.

6----------

The law relating to Partnership is at present contained in Chapter XI of the Indian Contract Act of 1872 as in force in Mysore. Some three years back, this House passed a bill relating to the sale of goods. That bill was the first of the series of measures intended to embody the different branches of law relating to contract in separate self-contained enactments. The present bill is the second of the series and is based upon the Indian Partnership Act which was passed in 1932.

The law of partnership as dealt with in the Contract Act is very brief containing only 27 sections and does not profess to be a complete statement of the law on the subject. The existing law was enacted about 60 years back. and since then there has been considerable development in business organisations. In the absence of clear and definite rules on these points, courts have held that Chapter XI of the Contract Act is not exhaustive and have relied on analogies drawn from the English law. The time has come to remove these defects and provide for satisfactory codification of the law relating to partnership. It is obvious that our laws relating to business organisations are to be, as far as possible, the same as those in force in British India. We have framed the bill closely following the Indian Act.

Bill to define and amend the law relating to

The law relating to partnership as at present

compared in Chapter XI of the Indian Contract Act

at Rove as it exists in Europe. Some months ago

back, this House passed a Bill relating to the

sale of Goods. That Bill was the first of two

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the English law. The time has come to remove

these defects and provide for satisfactory codifi-

cation of the law relating to partnership. It is

advisable that our laws relating to business organi-

sations are so, as far as possible, the same

as those in force in British India. We have

The bill repeals Chapter XI of the Contract Act as in force in Mysore. It consists of 7 Chapters dea ing with seven well-defined portions of the law and they are detailed in the statement of objects and reasons.

It will not be necessary at this stage to go into great detail into the several provisions of the bill as a detailed 'Notes on Clauses' has been appended to the bill. The main points of improvement in the bill over the existing law will be explained.

The definition of "Partnership" in the bill is an improvement over that in the Contract Act in that the fundamental principle that partners in carrying on the business of the firm are agents as well as - principals, is brought out more clearly. In view of the vast extent of non-contractual quasi-partners' relations in India, of which the Hindu trading family is an example, it has been deemed expedient to empha cise in one of the clauses the principle that partner ship is the result of voluntary agreement and to exclude specifically a Hindu undivided family carryin on family business from the relation of partnership. Certain rules have been enunciated for guiding courts in determining the existence of partnership for which courts at present have to resort to case law.

The relations of partners to one another are dealt with in fuller detail in Chapter III. Provi- sions regarding the conduct of the business of a firm and mutual rights and liabilities of partners have been elaborated. The goodwill of the business is specifically included among the property of the firm and it will go into all accounts for the determinati

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of shares of the partners. The mutual rights and duties of partners where a change in the constitution of the firm occurs and where a firm formed for particular undertakings proceeds to carry out other undertakings, have been defined.

Chapter IV deals with the relations of partners to third parties and develops the principle that each partner is the agent of the firm. The authority of a partner as agent is designated by a convenient term namely "implied authority". The extent and limitations of a partner's implied authority have been clearly defined and certain rules relating thereto, which have already been established by judicial decisions and are known in business circles, have also been embodied. Provisions dealing with the effect of admissions by a partner and of notice to a partner who habitually acts in the business of a firm have been newly added. The tortious acts of the partners for which the firm is liable are described, and the doctrine of "holding out" is elaborated. The extent of rights and liabilities of minors admitted to the benefits of partnership has been stated precisely.

In Chapter V all rules relating to the coming in of a new partner and to the going out of a partner are collected and set out in a convenient form. There is a new provision dealing with the expulsion of a partner. There is a change in the law in regard to insolvency of a partner. Under the Contract Act, insolvency itself is no ground for dissolution until a court dissolved it at the suit of a partner. Under the bill, a firm is dissolved automatically by the adjudication of a partner as an insolvent, unless there is a contract to the

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of the firm occurs and where a firm formed for part
ular undertakings proceeds to carry out other under
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at the suit of a partner. Under the bill, a firm
dissolved automatically by the adjudication of a pa
s an insolvent unless there is a contract to the

contrary. There is a new provision imposing restrictions on the activities of outgoing partners to prevent unfair competition with the firm.

Provision regarding dissolution of a firm are dealt with in Chapter VI.

Chapter VII deals with the subject of registration of firms, and is entirely new. It lays down the procedure for the registration of partners and firms. It is proposed in the bill to make registration of firms optional, and it is hoped that the inducement held out for registration will go in course of time to make the registration of firms of any magnitude a matter of course. During the course of the discussion in the Representative Assembly, it was pointed out by one member that registration of firms should not be voluntary intending that it should be compulsory. On the other hand, another member suggested that petty businessmen with small capital of less than Rs. 500 should not be compelled to register themselves. It is not the intention to apply the provisions regarding registration of firms and its incidence to the whole State or any part of it except by a special notification by the Government when suitable conditions exist for such extension. The Committee presided over by Sir Brajendra Nath Mitter which drafted in 1931 the Partnership Bill in India, were against compulsory registration and their reasons were stated as follows:--

stated as follows:--

compulsory registration and their results were
1932 the Partnership Bill in India were applied
over by Sir Brajendra Nath Mitter which drafted
exist for such extension. The Committee pres
by the Government when examination suitable condit
or any part of it except by a special notification
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be compelled to register themselves. It is not
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Provision regarding dissolution of a firm

to prevent unfair competition with the firm.
restrictions on the activities of outgoing partne
contrary. There is a new provision imposing

"The English precedent in so far as it makes registration compulsory and imposes a penalty for non-registration has not been followed as it is considered that this step would be too drastic a beginning in India and introduce all the difficulties connected with small and euphemeral - undertakings. Instead, it is proposed that registration should lie entirely within the discretion of the firm or partner concerned. Following the English precedent, any firm which has not registered will be unable to enforce its claims against third parties in the civil courts and any partner who has not registered will be unable to enforce his claims either against third parties or against his fellow partners. Under this scheme, a small firm or a firm created for a single ventur not meeting with difficulty in getting payment nee never register until it is faced with litigation".

These reasons weighed strongly with the Indian Legislature when it passed the Partnership Act. Optional registration will solve the difficulty raise by some members in the Representative Assembly regard small business ventures. Detailed provisions will considered in the select committee and the bill is no placed before you for your consideration.

I now beg to move that the bill published under Rule 8 of the Rules of Business be read in Council.

"The English precedent in no for be it makes registration compulsory and imposes a penalty for non-registration has not been followed /as is considered that this step would be too Gra a beginning in India and introduce all the difficulties connected with small and euphemeral - undertakings. Instead, it is proposed that registration should lie entirely within the discretion of the firm or partner concerned. Hollo the English precedent, any firm which has not registered will be unable to enforce its claim against third parties in the civil courts and partner who has not registered will be unable enforce his claims either against third parties against his fellow partners. Under this scheme a small firm or a firm created for a single ve not meeting with difficulty in getting payment never registers until it is faced with litigati

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PARTNERSHIP BILL.

The law relating to partnership is at present contained in Chapter XI of the Indian Contract Act of 1872 as in force in Mysore. Some three years back, this House passed a bill relating to the sale of good That bill was the first of the series of measures int ed to embody the different branches of law relating t contract in separate self-contained enactments. Th present bill is the second of the series and is based upon the Indian Partnership Act which was passed in 1932 which itself was based upon the corresponding English Act.

The law of partnership as dealt with in the Contract Act is very brief containing only 27 sectior and does not profess to be a complete statement of th law on the subject. The existing law was enacted about 60 years back, and since then there has been considerable development in business organisations. The existing law has left unnoticed many matters relating to partnership. In the absence of clear definite rules on these points, courts have held th Chapter XI of the Contract Act is not exhaustive and have relied on analogies drawn from the English law. The time has come to remove these defects and provid for satisfactory codification of the law relating to partnership. It is obvious that our laws relating

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to business organisations are to be, as far as possible, the same as those in force in British India. We have ~~therefore proposed in this~~ framed the bill to closely follow the Indian Act.

The bill repeals Chapter XI of the Contract Act as in force in Mysore. There are considerable changes in definition and arrangement. The bill consists of 7 Chapters dealing with 7 well-defined portions of the law and they are detailed in the statement of objects and reasons.

It will not be necessary at this stage to go into great detail into the several provisions of the bill as a detailed Notes on Clauses has been appended to the bill. The main points of improvement in the bill over the existing law will be explained. The definition of partnership in the bill is an improvement over that in the Contract Act in that the fundamental principle that partners in carrying on the business of the firm are agents as well as principals, is brought out more clearly. In view of the vast extent of non-contractual quasi-partnership relations in India, of which the Hindu trading family is an example it has been deemed expedient to emphasise in one of the clauses the principle that partnership is the result of voluntary agreement and to exclude

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specifically a Hindu undivided family carrying on family business from the relation of partnership. Certain rules have been enunciated for guiding courts in determining the existence of partnership for which courts at present have to resort to case law.

The relations of partners to one another are dealt with in fuller detail in Chapter III. Provisions regarding the conduct of the business of a firm and mutual rights and liabilities of partners have been elaborated. The goodwill of the business is specifically included among the property of the firm and it will go into all accounts for the determination of shares of the partners. The mutual rights and duties of partners where a change in the constitution of the firm occurs and where a firm formed for particular undertakings proceeds to carry out other undertakings, have been defined.

Chapter IV deals with the relations of partners to third parties and develops the principle that each partner is the agent of the firm. The authority of a partner as agent is designated by a convenient term namely " implied authority ". The extent and limitations of partners' implied authority have been clearly defined and certain rules relating thereto, which have already been established by judicial decisions

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and are known in business circles, have also been embodied. Provisions dealing with the effect of admissions by a partner and of notice to a partner who habitually acts in the business of a firm have been newly added. The ~~tort~~ torts acts of the partners for which the firm is liable are described, and the doctrine of "holding out" is elaborated. The extent of rights and liabilities of minors admitted to the benefits of partnership has been stated precisely. The Contract Act is defective in that it does not in express terms provide that the minor when attaining age becomes a partner if he does not refute his connection with the firm within a reasonable time though this principle is implied in section 248 and also in omitting to lay down fully the rights and remedies of a minor sharer as such, and these ~~difficulties~~ defects are remedied in the bill.

In Chapter V all rules relating to the coming in ~~and~~ of a new partner and to the going out of a partner are collected and set out in a convenient form. There is a new provision dealing with the expulsion of a partner. There is a change in the law in regard to insolvency of a partner. Under the ~~Indian~~ Contract Act, insolvency itself is no ground for dissolution until a court dissolved it at the suit

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of a partner. Under the bill a firm is dissolved automatically by the adjudication of a partner as an insolvent unless there is a contract to the contrary. There is a new provision imposing restrictions on the activities of outgoing partners to prevent unfair competition with the firm.

Provisions regarding dissolution of a firm are dealt with in Chapter VI. Dissolution has been clearly defined as dissolution of partnership between all the partners of a firm as distinguished from the severance of the connection of one partner only with the firm. The several methods of dissolution such as dissolution by agreement, compulsory dissolution, dissolution on the happening of certain contingencies, dissolution by notice and dissolution by the court, have been dealt with in detail. Certain new rules for being observed in settling accounts of a firm after dissolution and for dealing with personal profits earned after dissolution have been provided. Provision is made restraining a partner from carrying on a similar business in the firm name until the affairs of the firm are completely wound up. There is also a new provision relating to the sale of the goodwill of a firm.

Chapter VII deals with the subject of registrati

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of firms and is entirely new. It lays down the procedure for the registration of partners and firms. It is proposed in the bill to make registration of firms optional. And it is hoped that the inducement held out for registration will go in course of time to make the registration of firms of any magnitude a matter of course. During the course of the discussion in the Representative Assembly, it was pointed out by one member that registration of firms should not be voluntary intending that it should be compulsory. On the other hand another member suggested that petty businessmen with small capital of less than Rs.500 should not be compelled to register themselves. It is not the intention ~~at present~~ to apply the provisions regarding registration of firms and its incidence to the whole State or any part of it except by a special notification by the Government when suitable and such conditions for its extension ~~to any part of the State are considered suitable~~. The committee presided over by Sir Brajendra Nath Mitter which drafted in 1931 the Partnership Bill in India were against compulsory registration and their reasons were stated are as follows:-

> "The English precedent in so far as it makes registration compulsory and imposes a penalty for non-registration has not been followed as it is considered that this step would be too drastic a beginning in India and introduce all the difficulties connected with small and euphemeral undertakings. Instead it is proposed that registration should ~~apply~~ be entirely within the discretion of

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of the firm or partner concerned. Following the English precedent, any firm which has not registered will be unable to enforce its claims against third parties in the civil courts and any ~~person~~ person who has not registered will be unable to enforce his claims either against third parties or against his fellow partners. Under this scheme a small firm or a firm created for a single venture not meeting ~~that~~ this difficulty in getting payment need never register and even a firm with a large business need not register until it is faced with litigation".

These reasons weighed strongly with the Indian Legislature when it passed the Partnership Act. Optional registration will solve the difficulty raised by some members in the Representative Assembly regarding small business ventures. Detailed provisions will be considered in the select committee ~~when~~ and the bill is ~~recommended~~ now placed before you for ~~their~~ consideration.

I now beg to move that -

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STATEMENT OF GENERAL PRINCIPLES.

The law relating to partnership is contained in Chapter XI of the Indian Contract Act, 1872, as in force in Mysore. The inadequacy of the provisio contained therein has been recognised for a long time as many important matters relating to partnership were left un-noticed in Chapter XI. In additi to these omissions, the development of trade and business has shown further matters on which legisl tion is required. In the absence of clear and defi nite rules on these points, the Indian Courts have held that Chapter XI of the Indian Contract Act is not exhaustive and have relied on analogies drawn from the English Law. To remove these defects, a separate Act providing for a satisfactory codification of the law relating to partnership was passed in British India in 1932.

The Indian Partnership Act of 1932 as well as the Indian Sale of Goods Act of 1930 (which has been recently adopted in Mysore) were drafted by a Special Committee of leading lawyers presided over By Sir B.C.Mitter. In their report on the Sale of Goods Bill, they observed:

> "When Sir James Stephen moved the Indian Contract Bill, he admitted that it was not and could not pretend to be a complete code upon the branch of law to which it related. He, however, expressed a hope that in later years it would be easy to enact supplementary chapters relating to several branches of the law of contract which the bill did not touch. In our opinion, in view of the complexity of modern conditions, the time has now come when this process should be accelerated by embodying the different branches of law relating to contract in separate selfcontained enactments."

The Sale of Goods Bill was the first of the series foreshadowed by the Special Committee and the Partnership Bill was the second.

The Indian Partnership Act is based upon the corresponding English Act of 1890 with devia tions

on some points in order to adapt the law to Indian conditions or to supplement it in places where it i incomplete or are supported by the views of authori. tive commentators.

The law in Mysore, has however, remained the same as it was in 1872, in spite of the fact that the development of trade and business in Mysore, as in British India, has shown further matters on which legislation is required. It has therefore become necessary, in order to keep the law of partnership abreast of the developments of modern business relations, to remove the defects by enacting a separate measure on the lines of the Indian Partnership Act, 1932.

The Bill repeals and supersedes Chapter XI of the Contract Act. It makes considerable changes in definition and arrangement, gives effect to the mercantile view of a firm's continuity and adds provisions for voluntary registration of firms.

Chapter I deals with preliminary matters and definitions.

Chapter II deals with the nature of partnershi This law of partnership is made applicable only to the relationship created by contract and not to that arises from status; in particular, members of a Hind undivided family carrying on a family business as su are excluded from the application of this law.

Chapter III deals with the relations of partne to one another. The Indian Contract Act, 1872, as in force in Mysore, dealt with some of them in Sections 252, 253, 256, 257, 258 and 259. The present Bill deals with these relations in fuller details.

Chapter IV deals with the relation of partners to third parties. This chapter is mostly taken up with the statement and development of the principl

that each partner is the agent of the firm.

Chapter V collects together and sets out in a convenient form all rules relating to the coming in of a new partner and all rules relating to the going out of a partner in so far as these rules do not relate to the dissolution of the firm or to th consequences of dissolution.

Chapter VI deals with the dissolution of a firm and lays down that the dissolution of a firm means the discolution of the partnership relation between all the partners of a firm, as distinguished from the severance of the connection of one partner with the firm through retirement, expulsion or insolvency dealt with in the last chapter.

Chapter VII deals with the Registration of firms and lays down the procedure for the registration of partners and firms. It is not the intention to apply Chapter VII regarding registration of firms and its incidents to the whole of the State or any part of it, except by a special notification by the Government when conditions for its extension in any part of the State are considered suitable.

Chapter VIII, the last chapter, contains supplemental provisions regarding mode of giving notice, repeals and savings.

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"Chapter IV deals with the relation of partners to third parties. This chapter is mostly taken up with the statement and development of the principle that each partner is the agent of the firm.

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"Chapter VIII, the last chapter, contains supplemental provisions regarding mode of giving notice, repeals and savings."

Mr. T. MARIAPPA said that this was a very important measure and in the absence of the bill itself, it was not possible for the members to understand the measure merely by means of the statement of general principles. Further, the members were not aware what the experience of the working of the British Indian Act since 1932 was. For these reasons, he requested that

the members be supplied with copies of the bill and the discussion resumed thereafter.

The SECOND MEMBER (Rajamantrapravina S. P. Rajagopalachari) said that printed copies of the bill were not readily available and it would mean unnecessary delay if they should be got printed for distribution to the members. What was proposed to be done was merely to adopt the British Indian Act of 1932 without any material changes. Last year the general principles of the Sale of Goods Act, which was part of the Indian Contract Act, were accepted by the Assembly. The Law of Partnership also was part of the same Act, and was passed in British India in 1932. It was proposed to introduce it in the State without any material changes. It was only a consolidating Act. In the same way as the House agreed to legislation on the lines of the Sale of Goods Act on a previous occasion, it might give its approval to the general principles of this measure also. For purposes of reference, however, the British Indian Act would be made available to any member requiring it. After all, the Assembly was going to discuss only the general principles of the measure and details would have to be looked into by the Legislative Council.

Mr. P. SUBBARAMA CHETTY said that as the general principles placed before the House did not contain sufficient details, it was not possible for the members to understand what the measure was going to be. This was a matter affecting trade and commerce and it was very desirable, in such cases, that the Chamber of Commerce and the Merchants' Associations should be furnished with advance copies of the bill with a view to give them an opportunity to discuss the measure and give their opinion in the matter.

Mr. Malur SUBBA RAO said that if the datails of the measure had been given and Mr. Subbarama Chetty had gone through them, he would have been the first to give his support to the measure. The State was fast progressing in trade and industry and this measure had become absolutely necessary. The Assembly was concerned only with the general principles of the bill and the other details would be discussed in the Legislative Council. He would request the Assembly to give its hearty support to this necessary measure.

Mr. K. T. BHASHYAM AIYANGAR, while agreeing that the measure was both urgent and necessary, said that in a matter like this it would amount to treating the members with scant respect to ask for their approval to the measure without giving them all its details. In the same way as the Government had supplied copies of the Bills to amend the Workmen's Compensation Regulation and the Mysore District Boards Regulation, they could have supplied

copies of this bill also to enable members to understand it intelligently.

Referring to the general principles of the bill, MR. BHASHYAM AIYANGAR said that members of the House had been bringing to the notice of the Government several defects in the existing law, but so far, Government had not taken action to remedy the defects. He thanked the Government for having introduced a measure at least now. At the same time, he requested the Government not to wait in all such matters till the Government of India took action and then adopt their Acts as Regulations in this State, but to set an example even to the Government of India whenever and wherever possible.

With these remarks, he gave his support to the general principles of the measure under discussion, with the request that, at least in future, copies of all important bills be supplied to members of the House.

Mr. Belur SRINIVASIENGAR said that the Bengal Chamber of Commerce had pointed out certain defects in the British Indian Act in respect of optional registration, survivorship, dissolution of partnership, etc. If the Act was copied in this State without any modifications in those respects, the same defects would be perpetuated here also. If copies of the bill were furnished to the members as requested, and time given for studying the measure, the members would be in a position to suggest necessary improvements to the measure.

Messrs. Hosakoppa KRISHNA RAO and **J. MAHOMED IMAM** were also of the same opinion.

Mr. S. P. RAJAGOPALACHARI said that the Act was so lengthy that copies could not be supplied soon. No doubt, it would have been a help to members if copies had been given to them, though under the rules it was not necessary to do so. But the statement of general principles had been given many days back and no member had so far asked for the bill itself. If anybody had asked for it, action would have been taken to get copies printed at once. Apart from that, the bill was going to be the same as the British Indian Act and so there need be no hesitation in supporting it.

Mr. D. S. MALLAPPA however insisted on copies of the bill being circulated, further discussion being deferred for the purpose.

The DEWAN observed that from the trend of discussions it was clear that the general principles of the bill were acceptable to the House. On this account and in view of the fact that all the necessary details would be looked into by the Legislative Council, it was perhaps not necessary to print and supply copies to the members and to defer discussion.

Mr. L. VEMA REDDY agreed in this view.

Mr. H. K. MADIAH said that it could not be said that details should be examined by the Legislative Council only. Representatives of the people should also have an opportunity of examining them in important cases and giving their opinion. In his opinion, it was necessary that copies of the bill should be supplied to the members.

Mr. N. G. SANJIVIAH said that since the year 1926, the general principles of legislative measures were not being explained in detail and for want of such details, the members were also not in a position to send up amendments. Thus, a valuable privilege was lost to the members. The bill under discussion was a new one and it could not be said that everyone knew its details. So, he wanted that discussions on the measure be postponed to the last day of the session, arrangements being made to supply the members with copies of the bill in the meantime.

Mr. B. L. BYANNA did not think it necessary to postpone the consideration of the bill. Besides there were as many as 8 members of the Representative Assembly in the Legislative Council who would look to the necessary details. As the measure was an urgent one, he agreed that it might be agreed to by the House.

Mr. S. P. RAJAGOPALACHARI said that the Indian Partnership Act was already in force in British India and it was proposed to codify it in the State with certain verbal changes. The High Court had been consulted in the matter and their view was that in commercial matters the law in the State should be the same as in British India. He appealed to the lawyer-members of the House to explain the matter to their colleagues. This being an urgent measure, he hoped the House would accept it.

Mr. C. N. NARASINGA RAO said that the measure was a very necessary one. And because there was no law of this kind in force in Mysore, decisions of British Indian courts were being cited in the courts in the State and they were influencing decisions here. He therefore wanted that discussion on the measure might be postponed to the last day. In the meantime, attempts might be made to supply the members with copies of the bill. If that was not possible, the members would themselves look into the British Indian Act and be prepared for the discussion. He was sure that 90 per cent of the members would give their acceptance to the measure if copies were supplied to them.

Messrs. Belur SRINIVASIENGAR and **B. S. PUTTASWAMI** also shared the same opinion.

This request was granted by the President.

Mr. Belur SRINIVASIENGAR said that the provision about voluntary registration of firms might be examined in detail at the select committee stage.

Mr. T. MARIAPPA suggested that petty businessmen with a small capital of less than Rs. 500 should not be compelled to register themselves. He added that Dewan Bahadur Harbilas Sarada had exhaustively dealt with this point in his dissenting minute attached to the report of a select committee of the Indian Legislative Assembly.

The DEWAN said that these suggestions would be kept in view.

The general principles were then put to vote and passed.

XI. Bill to define and amend the Law Relating to Partnership.

(a) *Motion that the Bill published under Rule 8 of the rules of business be read in Council.*

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The FIRST MEMBER (Rajamantrapravina S. P. Rajagopalachari).—Sir, it is a far cry from Land Revenue and District Boards to the prosaic subject of the law of partnership. This is also a very necessary piece of legislation and I would ask the House to bear with me for a very little while, when I explain the detailed provisions of the Partnership law. The law relating to Partnership is at present contained in Chapter XI of the Indian Contract Act of 1872 as in force in Mysore. Some three years back, this House passed a bill relating to the sale of goods. That bill was the first of the series of measures intended to embody the different branches of law relating to contract in separate self-contained enactments. The present bill is the second of the series and is based upon the Indian Partnership Act which was passed in 1932.

The law of partnership as dealt with in the Contract Act is very brief containing only 27 Sections and does not profess to be a complete statement of the law on the subject. The existing law was enacted about 60 years back, and since then there has been considerable development in business organisations. In the absence of clear and definite rules on these points, courts have held that Chapter XI of the Contract Act is not exhaustive and have relied on analogies drawn from the English law. The time has come to remove these defects and provide for satisfactory codification of the law relating to partnership. It is obvious that our laws relating to business organisations are to be, as far as possible, the same as those in force in British India. We have framed the bill closely following the Indian Act.

The bill repeals Chapter XI of the Contract Act as in force in Mysore. It consists of seven Chapters dealing with seven well-defined portions of the law and they are detailed in the statement of objects and reasons.

It will not be necessary at this stage to go into great detail into the several provisions of the bill as a detailed 'Notes on Clauses' has been appended to the bill. The main points of improvement in the bill over the existing law will be explained.

The definition of "Partnership" in the bill is an improvement over that in

the Contract Act in that the fundamental principle that partners in carrying on the business of the firm are agents as well as principals, is brought out more clearly. In view of the vast extent of non-contractual quasi-partnership relations in India, of which the Hindu trading family is an example, it has been deemed expedient to emphasise in one of the clauses the principle that partnership is the result of voluntary agreement and to exclude specifically a Hindu undivided family carrying on family business from the relation of partnership. Certain rules have been enunciated for guiding courts in determining the existence of partnership for which courts at present have to resort to case law.

The relations of partners to one another are dealt with in fuller detail in Chapter III. Provisions regarding the conduct of the business of a firm and mutual rights and liabilities of partners have been elaborated. The goodwill of the business is specifically included among the property of the firm and it will go into all accounts for the determination of shares of the partners. The mutual rights and duties of partners where a change in the constitution of the firm occurs and where a firm formed for particular undertakings proceeds to carry out other undertakings, have been defined.

Chapter IV deals with the relations of partners to third parties and develops the principle that each partner is the agent of the firm. The authority of a partner as agent is designated by a convenient term namely "implied authority". The extent and limitations of a partner's implied authority have been clearly defined and certain rules relating thereto, which have already been established by judicial decisions and are known in business circles, have also been embodied. Provisions dealing with the effect of admissions by a partner and of notice to a partner who habitually acts in the business of a firm have been newly added. The tortious acts of the partners for which the firm is liable are described, and the doctrine of "holding out ' is elaborated. The extent of rights and liabilities of minors admitted to the benefits of partnership has been stated precisely.

In Chapter V all rules relating to the coming in of a new partner and to the going out of a partner are collected and set out in a convenient form. There is a new provision dealing with the expulsion of a partner. There is a change in the law in regard to insolvency of a partner. Under the Contract Act, insolvency itself is no ground for dissolution until a court dissolved it at the suit of a partner. Under the bill, a firm is dissolved automatically by the adjudication of a partner as an insolvent unless there is a contract to the contrary. There is a new provision imposing restrictions on the activities of outgoing partners to prevent unfair competition with the firm.

Provision regarding dissolution of a firm are dealt with in Chapter VI.

Chapter VII deals with the subject of registration of firms and is entirely new. It lays down the procedure for the registration of partners and firms. It is proposed in the bill to make registration of firms optional, and it is hoped that the inducement held out for registration will go in course of time to make the registration of firms of any magnitude a matter of course. During the course of the discussion in the Representative Assembly, it was pointed out by one member that registration of firms should not be voluntary intending that it should be compulsory. On the other hand, another member suggested that petty businessmen with small capital of less than Rs. 500 should not be compelled to register themselves. It is not the intention to apply the provisions regarding registration of firms and its incidence to the whole State or any part of it except by a special Notification by the Government when suitable conditions exist for such extension. The Committee presided over by Sir Brajendra Nath Mitter, which drafted in 1931 the Partnership Bill in India, were against compulsory registration and their reasons were stated as follows :—

> " The English precedent in so far as it makes registration compulsory and imposes a penalty for non-registration has not been followed as it is considered that this step would be too drastic a beginning in India and introduce all the difficulties connected with small and ephemeral undertakings. Instead, it is proposed that registration should lie entirely within the discretion of the firm or partner concerned. Following the English precedent, any firm which has not registered will be unable to enforce its claims against third parties in the civil courts and any partner who has not registered will be unable to enforce his claims either against third parties or against his fellow partners. Under this scheme, a small firm or a firm created for a single venture not meeting with difficulty in getting payment need never register until it is faced with litigation."

These reasons weighed strongly with the Indian Legislature when it passed the Partnership Act. Optional registration will solve the difficulty raised by some members in the Representative Assembly regarding small business ventures. Detailed provisions will be considered in the select committee and the bill is now placed before you for your consideration.

I now beg to move that the bill published under rule 8 of the rules of business be read in Council.

The SECRETARY to GOVERNMENT, GENERAL DEPARTMENT (Mr. M. Venkatesa Iyengar).—Sir, I beg to second the motion.

Rajacharita Visarada Rao Sahib C. HAYAVADANA RAO.—Sir, I beg to support the principle of this measure. The bill before the House tries to assimilate to our law of partnership the Law of Partnership as it exists in British India today. The British Indian Law, if it is not too presumptuous on my part to say so, is an excellent piece of draftsmanship. It has been, unlike its predecessor the Indian Contract Act, which was drawn up over 57 years ago by the Indian Law Commission, based on the

lines of a foreign code which had no relationship to the conditions that then prevailed in this country and which was drafted by persons who, though they might be correctly described as not only learned in the law but also as experts, were yet wholly non-cognizant of the conditions prevailing here. There is a peculiar fitness in Mysore following and adopting a law like the one passed lately in British India, a law which has been well sifted and well considered and drafted in a business-like manner and which, for the clarity of views enunciated is hard to beat. It has been suggested that Mysore may not be quite in a position to appropriate this particular piece of British Indian law. I hope that opinion will not prevail. For, we are changing and advancing and trade conditions are such today, if I may put it in that way with some experience of trade position here during the past 20 years, that a measure like this has been a felt necessity for some years now. Traders and commercialists find difficulties in knowing actually who are the partners who make up a firm. As a matter of fact, the Insolvency law has been so simplified and so universalised in India that hardly a week passes without our seeing in the Gazette long lists of names of persons who had to take advantage, for one reason or another, of the Insolvency Regulation. Oftentimes, these are partners in respectable firms who are losing large sums of money because they know nobody from whom they ought to claim the amounts due to them. In the beginning a sort of confidence trick is played on gullible parties and I can bear testimony to the fact that firms of standing have been losing money to which they are justly entitled by this kind of deception practised on traders. Consequently, I do not think there is any section of opinion in this Council, at any rate, which will endorse the view that this measure is today anything like too much in advance of what is needed by us. I do hope that every one in this hon. House will whole-heartedly support this measure from the point of view of the trades and help to protect its interests in the manner adumbrated in it.

Next, there is this important factor to be remembered in assimilating the law to what it is in British India. Some sort of unification is necessary, especially in the matter of legislation affecting trade interests. Because, we are in daily contact with British Indian traders—and we have to trade with them—our law should, if possible, be analogous to theirs. In fact, if the law of British and Indian India is not unified, there are bound to be difficulties in our getting into business relations with each other. Considerable stress has to be laid on the unification of commercial law in this country. I may say that the tendency in connection with this particular measure has been to obtain a unification throughout the British Commonwealth of Nations. Measures passed by the Houses of Parliament in England have

been generally adopted by all the Dominions and Colonies. The British enactment has been textually adopted by the Dominions and Colonies in all commercial matters. British India also has very nearly assimilated the British law of trade and commerce in this particular measure. Consequently, there is a double advantage to be derived by our adopting for our purposes, a law that has been enacted by the British Indian legislature, with any small amendments that might be required to suit local requirements. But so far, no large amendments of any kind have suggested themselves to me, though I have gone into the proposed measure with some degree of care.

I have just said that there are advantages to be gained by our adopting the law as it prevails in British India. There are, for instance, two points which are definitely clarified in the British Indian enactment; the definition of 'partnership' set down in it is unambiguous; also the differentiation that is usually made between a "partnership" and a "firm" has been legislatively recognised. This is, I think, entirely in the interest of traders in Mysore.

The provision in regard to the sale of goodwill will be widely appreciated. I think, sir, so far as partnerships go, they are more in number in Mysore than joint-stock companies. So, a clause like the one included in this Bill which provides for the sale of good-will after dissolution, on the lines laid down in the British Indian Act, though it is a material departure from the British Act itself, is to be widely welcomed. Though the word 'goodwill' is not defined in the British Indian Act and though it is not sought to be defined in the present Bill as well, all that is necessary when a partnership is dissolved is that one of the partners should take it over. Today the universal practice is to value it and take it over at some agreed valuation. Certain legal consequences will follow from such taking over. The right to the ownership of 'goodwill' should accordingly be provided for. I think the provision in the Bill in this regard is a good one from the point of view of partners when dissolution takes place and the transfer of 'goodwill', has to be settled on some definite basis. The Bill treats it as an asset, which seems fair and just.

I do not think, sir, that the principle of the measure is likely to create any very large difference of opinion. There is, however, one other point that I would like to refer; and that is the provision that the hon'ble mover referred to, *viz.*, that it provides for the voluntary registration of firms. I think, sir, taking everything into consideration, voluntary registration is to be commended. Smaller traders and temporary firms that are formed for particular trades or for particular seasons or occasions need not, under the bill, register. If registration is made compulsory, there would be considerable inconvenience caused to these parties. From the table of fees,

should say that Government have been very careful to propose very moderate fees. Though not in this particular instance, the tendency in British India is generally to increase the fees as a reference to the table of stamp duties leviable in British India will readily show. Here it is kept up practically at nominal rates.

There is so much to say in favour of this Bill that I do not want to expatiate on its merits but would heartily commend it to all persons who have the interests of traders and commercialists at heart.

Mr. D. H. CHANDRASEKHARAIYA.—Sir, I think that this is a very non-controversial measure introduced in our State not a day too soon. Our law on the subject is nearly 63 years old though in the meanwhile the development of trade and business has gone on considerably in our State. The result has been that the decisions on the subject have been various and conflicting and I am sure that after this measure is enacted into law, all these decisions will be set at rest and the partners will be able to know what their rights and liabilities are when they enter into partnerships. There is one point which I would like to mention, *viz.*, whether it would not be proper to apply at least some Sections of the Act to the Hindu undivided family partnership. As we know, the Hindu Law, except in respect of the rights of women, is still uncodified and this has led to various conflicting decisions. Though the British Indian Act has included joint family firms, yet it is not necessary that we should slavishly follow everything done. Then a few important Sections which are not really opposed to the spirit of Hindu Law may be made to apply to joint family firms.

On the whole, the provisions of this bill are very useful and the entire law on the subject is made very definite. I am sure the bill will receive the acceptance of this hon. House without any hesitation.

Mr. P. SUBBARAMA CHETTY.—I whole-heartedly support the provisions of this bill. It is certainly very necessary and very desirable in the interests of trade and commerce in the State. The trade in our country has also advanced along with the trade of the neighbouring British Indian Provinces. So the problems that relate to trade and commerce here are getting as much complicated as trade and commerce in British India. For the last 60 years there has been no improvement or amendment to the existing law. The Partnership Bill now placed before the House is based on the Indian Partnership Act of 1932. It is also found that it does not affect the joint Hindu family business. It is also not obligatory that the firm should be registered. I do not propose to enter into details but I would like to point out one or two provisions which I am unable to understand and which I think I must oppose.

Clause 16, sub-clause (*b*) refers to a partner carrying on business of the same nature as that of the firm. I do not

understand the equity or justice of this provision. Suppose I have got a shop and I am also a partner of another firm which is doing similar business. Then, according to this provision, whatever profits I may make in my own business must go to the profits of the partnership business. Is it fair and equitable? This prevents a man from doing business in two places if the business is of the same nature. I do not like to go into the other provisions in detail. So far as the general principles are concerned, I agree to them; but there are certain provisions to which I take exception. I shall reserve them for discussion later on.

*Mr. J. MAHOMED IMAM.—I want to know one thing. The bill excludes members of a Hindu joint family and it is a right thing. Among Mahomedans also, brothers live together and carry on business jointly. But according to Mahomedan Law joint business is not recognised. I want to know whether this bill applies to Mahomedan members of a family.

Mr. S. P. RAJAGOPALACHARI.—Have they the joint family system?

Mr. J. MAHOMED IMAM.—No.

Mr. S. P. RAJAGOPALACHARI.—Then it won't apply to them.

*Mr. J. MAHOMED IMAM.—But practically so many brothers live together and do business together. Since you exclude members of the Hindu joint family it may apply to Mahomedan families and they may come to be included under this law. When two brothers do business jointly, you cannot call it a firm since there will be no agreement as to the share of profits, etc. They will be something like tenants in common. They are not joint tenants and there will be no agreement. So I want the Mahomedan members of a family also to be excluded.

*Mr. K. T. BHASHYAM AIYANGAR.—Sir, I think this is a measure which is long overdue here. Ever since the Contract Act was introduced, we have felt a great deal of difficulty in matters concerning partnership trade in the State. Whether a certain business is a partnership business or not, has itself been a question involving a great deal of expenditure of time and money in order to get an adjudication. And after deciding the matter that it is a partnership, difficulties have arisen about the liability of one partner to another, or to a third party, by reason of transactions carried on either by the business or by any one of the members of the business. Several complicated questions have arisen. The Contract Act has not been able to provide for all these contingencies. That is why even when the Contract Act was introduced in British India itself, a note was made that it was necessary that a separate provision may have to be made for the purpose of legislating on those points. In British India they have passed already a law which the present Regulation here seeks to follow.

There is not much to find fault within this bill and so far as I can see, almost all the provisions there are in the interest of trade and its welfare and what is more from my point of view, it is very much in the interest of putting down the unnecessary and needless litigation.

One point was raised by my hon. Friend Mr. Chandrasekharaiya that some of the provisions should be made applicable to Hindu families. I should consider that it would not be wise. Because, Hindu family trade is of quite a distinct kind altogether. It is a business which is carried on by certain people not because they are in agreement with each other but because of their status as being members of that family and particularly because their business has been in the family from a long time. It would not be proper for us to apply any of these provisions there.

Mr. D. H. CHANDRASEKHARAIYA.— It is only to facilitate trade and business of such firms.

***Mr. K. T. BHASHYAM AIYANGAR.**— It would not be necessary. I will give an instance. If you begin to apply this, there will be a great deal of trouble. In ordinary partnership where trade is run by consent of parties to a business, and where one of the parties dies, we can take it that consensus has ceased and partnership is dissolved. If you apply it to a joint family, it would work a great deal of hardship and mischief also. I should not consider that it is necessary at all at this stage because the principles of Hindu Law make it quite easy enough for any person who deals with business run by a Hindu family to safeguard himself. Take another instance; generally, in a partnership business, there should be a deed in writing. That also will not be necessary in the case of a Hindu family. I don't think there is any provision which can usefully be applied to the Hindu family.

I could not understand whether any difficulty would be felt by the provision under 16 (*b*) as pointed out by Mr. Subbarama Chetty. I think it is not merely fair and reasonable to make a provision of that kind but altogether necessary in the interest of partnership. What is the fun of a man being a partner with me and carrying on a rival trade and taking away all the profit? In a partnership business, each partner is a person in whom others have got confidence and in whom they have got to place reliance and such a man should not be allowed to compete with the same business elsewhere and carry away the profit for himself, all the while putting on an appearance of being friendly. That is why this provision is put in, *viz.*,

> "If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business."

That has been put in there as a safeguard. What is the grievance there? This provision is very fair and ordinarily it will be very necessary also.

For these reasons, I think that this is

a measure which should be welcomed on all hands.

Mr. S. P. RAJAGOPALACHARI.—All the three suggestions that were made on this bill to-day can be met by the one fundamental proposition of the law that in partnership each partner is the agent of all the other partners and that is the reason why the Hindu joint family is excluded. There the relationship is not contractual but based upon birth. If one member of the family dies, for instance, there is no question of winding up the firm; by the law of survivorship, the other members of the Hindu joint family become the owners of all the assets as well as the liabilities of the firm. For the same reason, Mahomedan families cannot get this; because, there is no question there of survivorship.

The same principle of agency will dispose of the doubt expressed by Mr. Subbarama Chetty about clause 16 (*b*). There also each partner is the agent of the other partners and he cannot, as pointed out by Mr. Bhashyam Aiyangar, be allowed to engage himself in a business of the same nature and compete with it and make there some private profit for himself.

In other respects, I am glad to find that all the members of this Council cordially welcome this measure.

Mr. P. SUBBARAMA CHETTY.—Sir, I find I have not made myself very clear. What I meant was, among partners there are two classes: one is working partnership and the other is sleeping partnership. Sleeping partners do not at all work in those firms, they only contribute something to the capital and they get their share of profits. But according to this, it prevents the sleeping partner who is merely financing the firm from carrying on the same trade independently of the partnership business. When there is wide scope in a place for doing both partnership as well as independent business, why should such a thing be prevented? That is my point. If you want I shall give concrete instances of it in the city of Bangalore.

Mr. S. P. RAJAGOPALACHARI.—With regard to the sleeping partners, if they join one firm, they must sleep with regard to other business of the same nature. I shall read a commentary on sub-clause (*b*). I did not read it at first because I thought it was unnecessary. This is a fundamental principle of the law and there is no use going against it:

> "Every partner being presumably an agent of the firm, the principle may be regarded as developed from or parallel to the universal rule in the law of agency that an agent must not deal on his own account or make any undisclosed profits for himself. The two clauses of the present Section being branches of the same fundamental rule, their application must always be enforced with reference to business transactions."

I may also say that this law of partnership as well as of sale of goods were very carefully examined by an expert committee consisting of three of the ablest lawyers in India before the bills were ntroduced and all these clauses have

been very carefully framed, and even Mr. Subbarama Chetty, very critical as he is, may take it that it is a very ordinary and normal provision.

Mr. PRESIDENT.—The qusetion is :

" That the Bill to define and amend the Law relating to Partnership, published under rule 8 of the rules of business, be read in Council."

The motion was adopted.

(*b*) *Motion that the Bill be referred to a Select Committee.*

Mr. S. P. RAJAGOPALACHARI.—Sir, I beg to move that the Bill to define and amend the Law relating to Partnership be referred to a Select Committee consisting of the following gentlemen :—

Messrs.—
D. Srinivasa Iyengar,
S. Abdul Wajid,
A. R. Nagesvara Aiyar,
M. G. Mehkri,
P. Subbarama Chetty,
B. K. Garudachar,
Mahomed Imam,
C. Hayavadana Rao, and
the Mover as Chairman.

Mr. M. VENKATESA IYENGAR.—Sir, I beg to second the motion.

Mr. PRESIDENT.—The question is :

" That the Bill to define and amend the Law relating to Partnership be referred to a Select Committee consisting of the gentlemen named by the Mover."

The motion was adopted.

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THE MYSORE REPRESENTATIVE ASSEMBLY.

DASARA SESSION—OCTOBER 1935.

STATEMENT OF GOVERNMENT BUSINESS TO BE PLACED BEFORE THE REPRESENTATIVE ASSEMBLY.

I. Statement of General Principles of the Bill further to amend the Mysore Land Revenue Code, 1888.

Under Section 179 of the Mysore Land Revenue Code, 1888, it is obligatory on the part of the person declared to be the purchaser at revenue sales to deposit immediately twenty-five per cent of the bid amount, and under Section 180 of the said Code, he is required to pay the balance before sunset of the fifteenth day from that on which the sale took place. In some cases the purchasers are the persons for whose benefit the sales are held. For example, the sale may be on account of arrears due to a Co-operative Society or to an Inamdar from his tenant. At present, no option is allowed by the Code to set off the purchase money against any amount due to the purchaser himself from such sale proceeds. This is likely to work as a hardship. It is, therefore, proposed to amend the Land Revenue Code by the addition of a new Section 180-A on the lines of the rules contained in the Civil Procedure Code in the matter of allowing a concession of set off when the decree-holder purchases the property in a Civil Court sale.

II. Statement of General Principles of the Bill further to amend the Mysore Police Regulation V of 1908.

Under Section 56 (*a*) of the Mysore Police Regulation, 1908, whoever drives along or keeps standing in any street a vehicle of any description at any time between half an hour after sunset and one hour before sunrise, without a sufficient light is liable to be punished. Dragging or pushing a vehicle without a light does not come under the scope of this section as it cannot be termed driving. It has been brought to the notice of Government that carts without lights pushed by hawkers or coolies are commonly found in the busy roads of the cities thereby causing serious nuisance. The bill is intended to amend the Regulation so as to make the act of pushing or dragging a vehicle without lights half an hour after sunset and one hour before sunrise, an offence under the Regulation.

III. Statement of General Principles of the Bill to amend the Mysore Religious and Charitable Institutions Regulation VII of 1927.

Under Section 38 (2) of the Mysore Religious and Charitable Institutions Regulation VII of 1927, an appeal lies to the Government against every order passed by the Muzrai Commissioner, whereas under Section 210 (2) of the Mysore Land Revenue Code, 1888, appeals lie to the Government from an appellate decision or order passed by the Revenue Commissioner, only in cases involving points of law. This section in the said Regulation, VII of 1927, is found to lead to a number of petty appeals on facts to the Government, which in their opinion is not desirable. It is therefore proposed to amend it suitably in conformity with the provisions of Section 210 (2) of the Mysore Land Revenue Code. Such an amendment will not cause any real inconvenience to parties concerned as the Government have powers of revision under Section 39 of the Regulation, VII of 1927.

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IV. Statement of General Principles relating to the amendment of the Food Adulteration Regulation.

The question of amending the Mysore Prevention of Adulteration Regulation so as to provide for the addition of a section prohibiting the colouring, mixing, and staining of food stuffs by deleterious matter has been under the consideration of Government for sometime past. Provision for this exists in Bombay Act V of 1925 and the Director of Health has recommended the addition of a similar clause to the Mysore Regulation. It is proposed to introduce a similar provision into our Regulation.

Objects & Reasons.

V. Statement of General Principles of the Bill pertaining to law regarding Partnership in Mysore.

The law relating to partnership is contained in Chapter XI of the Indian Contract Act, 1872, as in force in Mysore. The inadequacy of the provisions contained therein has been recognised for a long time as many important matters relating to partnership were left un-noticed in Chapter XI. In addition to these omissions, the development of trade and business has shown further matters on which legislation is required. In the absence of clear and definite rules on these points, the Indian Courts have held that Chapter XI of the Indian Contract Act is not exhaustive and have relied on analogies drawn from the English Law. To remove these defects, a separate Act providing for a satisfactory codification of the law relating to partnership was passed in British India in 1932.

The Indian Partnership Act of 1932 as well as the Indian Sale of Goods Act of 1930 (which has been recently adopted in Mysore) were drafted by a Special Committee of leading lawyers presided over by Sir B. C. Mitter. In their report on the Sale of Goods Bill, they observed

> When Sir James Stephen moved the Indian Contract Bill, he admitted that it was not and could not pretend to be a complete code upon the branch of law to which it related. He, however, expressed a hope that in later years it would be easy to enact supplementary chapters relating to several branches of the law of contract which the bill did not touch. In our opinion, in view of the complexity of modern conditions, the time has now come when this process should be accelerated by embodying the different branches of law relating to contract in separate selfcontained enactments."

The Sale of Goods Bill was the first of the series foreshadowed by the Special Committee and the Partnership Bill was the second.

The Indian Partnership Act is based upon the corresponding English Act of 1890 with deviations on some points in order to adapt the law to Indian conditions or to supplement it in places where it is incomplete or are supported by the views of authoritative commentators.

The law in Mysore, has however, remained the same as it was in 1872, in spite of the fact that the development of trade and business in Mysore, as in British India, has shown further matters on which legislation is required. It has therefore become necessary, in order to keep the law of partnership abreast of the developments of modern business relations, to remove the defects by enacting a separate measure on the lines of the Indian Partnership Act, 1932.

The Bill repeals and supersedes Chapter XI of the Contract Act. It makes considerable changes in definition and arrangement, gives effect to the mercantile view of a firm's continuity and adds provisions for voluntary registration of firms.

Chapter I deals with preliminary matters and definitions.

Chapter II deals with the nature of partnership. This law of partnership is made applicable only to the relationship created by contract and not to that which arises from status; in particular, members of a Hindu undivided family carrying on a family business as such are excluded from the application of this law.

Chapter III deals with the relations of partners to one another. The Indian Contract Act, 1872, as in force in Mysore, dealt with some of them in Sections

252, 253, 256, 257, 258 and 259. The present Bill deals with these relations in fuller details.

Chapter IV deals with the relation of partners to third parties. This chapter is mostly taken up with the statement and development of the principle that each partner is the agent of the firm.

Chapter V collects together and sets out in a convenient form all rules relating to the coming in of a new partner and all rules relating to the going out of a partner in so far as these rules do not relate to the dissolution of the firm or to the consequences of dissolution.

Chapter VI deals with the dissolution of a firm and lays down that the dissolution of a firm means the dissolution of the partnership relation between all the partners of a firm, as distinguished from the severance of the connection of one partner with the firm through retirement, expulsion or insolvency dealt with in the last chapter.

Chapter VII deals with the Registration of firms and lays down the procedure for the registration of partners and firms. It is not the intention to apply Chapter VII regarding registration of firms and its incidents to the whole of the State or any part of it, except by a special notification by the Government when conditions for its extension in any part of the State are considered suitable.

Chapter VIII, the last chapter, contains supplemental provisions regarding mode of giving notice, repeals and savings.

C. SUBRAHMANYA AIYAR,
Secretary, Mysore Representative Assembly.

The following notes on clauses further explain the scope of the sections

W-D-506—GPB—400—25-9-35

Notes on Clauses

NOTES ON CLAUSES.

(N.B. In the following notes Contract Act mean the Indian Contract Act as in force in Mysore.)

Clause 2 gives explanations of certain expressions used in the Bill, viz., (a) 'act of a firm', (b)'business' (c) 'prescribed' and (d) 'third party'; (a), (c) and (d) are new and (b) is taken from the English Act; (e) enacts that other expressions used in the Bill are to be understood in the sense as defined in the ~~Indian~~ Contract Act, ~~1872, as in force in Mysore~~.

Clause 3, like Section 3 of the Sale of Goods Regulation, 1932, will make the Partnership Regulation a branch of the general law of Contract. Sub clause (e) of clause 2, has the same object.

Clause 4. This clause contains the difficult definition of'partnership'and the simple ones of'partner;''firm'and'firm's name'. The definition of partnership is an improvement on that adopted in Sec. 239 of Contract Act. The intention is to bring out more clearly the fundamental principle that partners when carrying on the business of the firm are agents as well as principals. The definition of'partnership' contains three elements:--

(1) There must be an agreement entered into by all the persons concerned;

(2) The agreement must be to share the profits of a business;

and

(3) the business must be carried on by or any of the persons concerned for all.

The first element relates to the voluntary c al nature of partnership; the 2nd gives the which leads to the formation of firms, i.e. acquisition of gain and the 3rd show

persons of a group who conduct the business do so as agents for all the persons in the group and are therefore liable to account to all.

The Bill does not make agreement to share loss, a test of agreement of partnership, but take the course of ~~taking the~~ treating ~~or~~ the sharing of losses as ~~the~~ a legal consequences arising out of the relation of partnership which is established otherwise.

Clause 5, emphasizes one of the elements in the definition, viz., that partnership is the result of voluntary agreement. In ~~t~~ view of the vast extent of non-contractual quasi partnership relations in India of which the Hindu trading family is the outstanding example, it is deemed expedient to insert this clause to prevent all possible doubt.

Clause 6 is intended to guide the courts in determining the existence of partnership. It is the real relation between the parties that has to be looked into and not merely the expressed intention. It is necessary to examine all the incidents of the relation between the parties as shown in written agre-ments, verbal agreements or mere conduct, to lay special stress on no particular fact and no particular legal element in partnership, but to take all the facts impartially into account and from them to deduce the real relation between the parties.

The explanations contain useful ~~dis~~positions of law for the guidance of courts, which may fairly be treated as rules subsidiary to and explanatory of the central rule contained in this clause.

Clause 7 gives a statutory name 'Partnership at will' to a partnership the duration of which has not been provided for and/from which a partner can retire at any time by merely giving notice to the other partners.

Clause 8 is new and is inserted to meet cases where the business may be limited to particular adventures and undertakings, so that the partnership comes to an end as soon as the particular adventure or undertaking is finished. The practice of establishing "particular partnership" is much favoured by firms with numerous branches and the practice should not be hampered by doubts regarding the extent of the liabilities of the "particular partner".

CHAPTER III - RELATIONS OF PARTNERS TO ONE ANOTHER

Clause 9 corresponds to Sec. 257 of the ~~Indian~~ Contract Act, ~~1872, as inforce in Mysore~~.

Clause 10 is new. It embodies in statute form what is ordinary law, viz., a person must indemnify the loss suffered by another through his fraudulent conduct.

Clause 11, sub clause (i) expresses the rule contained in Sec. 252 of the Contract Act. It is an expression of that most important of all principles of partnership law, viz., that as far as possible, the partners should have freedom to arrange their own affairs amongst themselves. It will allow arrangements to be made from time to time formally or informally on all matters which affect partners only. In pursuance

of

of this idea, the remaining clauses of this Chapter and some in Chapters 5 & 6 are "subject to contract between the partners" i.e., they express rules which are applicable in the absence of contracts varying them. Sub clause (ii) reproduces exception (3) to Sec. 27 of the Contract Act. The subject matter fits in more aptly here and the exception is accordingly repealed.

Clause 12 deals with the conduct of business and sub clauses (a) to (c) correspond to clauses (3) to (5) of Sec. 253 of the ~~Indian~~ Contract Act, ~~1872, as in force in Mysore~~ and sub clause (d) gives to every partner a right to have access to and inspect and copy the books of the firm.

Clause 13 deals with the mutual rights and liabilities of partners. Sub clauses (a) and (b) correspond to clauses (4) & (2) of Sec.252 of the ~~Indian~~ Contract Act, ~~as in force in Mysore~~, Sub clause (c), (d), (e) and (f) are entirely new.

Clauses 26 & 27 make the whole firm liable to third parties for wrongful acts or omissions of partners, and as it is desirable to provide for a right of indemnity to the other partners for loss caused to the firm by the wrongful acts or omissions of a partner clause 10 and sub clause (f) of clause 13 have been inserted. Wilful neglect in clause 13 (f) means that degree of neglect shown by abstention from an obvious duty, attended by a knowledge of the likely results of the abstention.

Clause 14 defines the property of the firm and contains the substance of Sec. 253 (1) of the ~~Indian~~ Contract Act ~~as in force in Mysore.~~ The

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goodwill of the business is specifically included among the property of the firm. It will automatically be included in all accounts for the determination of shares.

Clause 15 enjoins the application of the property of the firm exclusively for the purposes of the business of the firm.

Clause 16 deals with the personal profits earned by partners and corresponds to sections 258 and 259 of the ~~Indian~~ Contract Act, ~~as in force in Mysore.~~

Clause 17, sub clauses (a) and (c) are new and define the mutual rights and duties of the partners where a change in the constitution of the firm occurs and where a firm formed for particular undertakings proceeds to carry out other undertakings. Sub-clause (b) corresponds to section 256 of the ~~India~~ Contract Act, ~~as in force in Mysore.~~

CHAPTER IV.--RELATION OF PARTNERS TO THIRD PARTIES

Clause 18 lays down the first principle that each partner isthe agent of the firm.

Clause 19, sub clause (1) defines the general extent of a partner's agency and is similar in substance to Sec. 251 of the ~~Indian~~ Contract Act, ~~as in force in Mysore.~~ This authority of a partner as ~~agaxxxx~~ agent is designated by a convenient term, viz., 'implied authority'.

In sub clause (2) the ~~extent~~ and limitations of a partner's implied authority ~~in sub clause (1)~~ are stated Re delimitations of a partner's implied authority in sub clause (1)

is not precise. Certain rules have already been estaolished by judicial decisions and are known in business circles, and these are embodied in this clause

Clause 20 embodies the exception clause in Sec. 251 of the ~~Indian~~ Contract Act. This is an enabling provision whereby partners may authorise a trusted partner to do necessary acts which are in excess of implied authority, and whereby they may restrict the activities of an inexperienced partner.

Clause 21 gives emergency power to a partner on the lines of the power of an agent under Sec. 212 of the Contract Act.

Clause 22 indicates the mode of doings acts if they are to bind a firm.

Clauses 23 and 24 which deal with the effect of admissions by a partner and of notice to a partner who habitually acts in the business of the firm, are ~~p~~ new provisions.

Clause 25.-This is the general statement of the liability of a partner for the liabilities of the firm Sections 249 and 250 of the Contract Act merely provid that each partner is liable for all the liabilities of the firm but does not say that the partners are all liable jointly and severally. Sec. 43 of the Contract Act makes joint promissors generally liable jointly and severally and this general principle has been applied to partnership liabilities in India. The clause expresses this principle. The liability relates to both contracts and torts.

Clauses 26 & 27 describe the tortious acts of partners for which a firm is liable.

Clause 28 introduces the doctrine of "holding out". It represents sections 245 & 246 of the Contract Act.

Clause 29 like clause 30 relates to persons who are third parties, ~~that are put in~~ but have a footing inside the firm. This clause relates to assignees of the whole of a partner's ~~ship~~ share in the firm. These persons may be complete strangers to the non-transferring partners and may be personally objectionable to them. The clause gives the assignees very limited rights.

Clause 30.-Under the English law, there is nothing to preclude an infant from entering into a contract of partnership though, speaking generally, while he is an infant, he incurs no liability and is not responsible for the debts of the firm and when he comes of age or even before, he may disaffirm past transactions. In view of Sec. 11 of the Indian Contract Act and the decision of the Privy Council in Mahori Bibi's case ~~that~~ about the general incapacity of an infant to enter into a contract, there will be no justification with reference to the law of partnership only for departing from this principle of the Indian Law. At the same time, it has been the law in India that a minor becomes personally liable for the obligations of the firm if he does not repudiate the partnership within a reasonable time after his attaining age, vide Secs. 247 &248 of the Contract Act. Sec. 247 has been interpreted by the Judicial Committee to mean that a minor cannot be a partner in the firm. The Contract Act is defective, however, in that it does not, in express terms, provide that the minor on attaining age becomes a partner if he does not repudiate his connection with the firm within a reasonable time.

though this principle is implied in Sec. 248.
The Act is also defective in omitting to lay down fully the rights and remedies of a minor sharer as such. Clause 30, while,

Clause 30 In retaining the existing law as to the minor's position, is intended to remedy the defects pointed out.

CHAPTER V.

INCOMING AND OUTGOING PARTNERS.

Clause 31 deals with the introduction of a new partner and lays down that such a new partner will not be liable for any act of the firm done before his introduction; it embodies the principles in Section 253 (6) and 249 of the Contract Act.

Clause 32 relates to the retirement of a partner. It embodies the rule in Section 253(5)+(6) of the Contract Act. The other sections are new.

Clause 33 deals with the expulsion of a partner and is a new provision.

Clause 34 deals with the insolvency of a partner. This introduces a change in the law on the subject, for under the Contract Act insolvency itself was no ground for dissolution until a Court dissolved it at the suit of a partner, vide Sec. 254 (2) of the Contract Act. Under Sec. 42 (d) as well as under this Section, a firm is dissolved by the adjudication of a partner as an insolvent unless there is a contract to the contrary.

Clause 35 deals with the liability of the estate of a deceased partner and corresponds to Sec. 261 of the Contract Act.

Clause 36 relates to restrictions which are imposed on the activities of outgoing partners to prevent unfair competition with the firm and is a new provision. Clause(2) is derived from the second exception to Sec.27 of the Contract Act which will be repealed.

Clause 37 declares the right of an outgoing partner or his representative to a share of the profits or interest pending the final settlement of accounts.

Clause 38 deals with the revocation of continuing guarantee by change in the firm and corresponds to Sec. 260 of the Contract Act.

CHAPTER VI. DISSOLUTION OF A FIRM.

Clause 39 contains the definition of 'dissolution of a firm', viz., dissolution of partnership relation between all the parties of a firm as distinguished from the severance of the connection of one partner only with the firm through retirement, expulsion, etc. which is dealt with in the last chapter

Clause 40 covers the cases where all parties agree that the firm should be dissolved and also the cases where the dissolution occurs in pursuance of a contract previously made between the parties.

Clause 41 deals with compulsory dissolution, i.e., of a dissolution in spite of any contract to the contrary and the latter portion of the clause corresponds to Sec.255 of the Contract Act.

Clause 42 enumerates certain contingencies on the happening of which the firm stands dissolved where there is no contract to the contrary.

Clause 43 relates to the dssolution of a "Partnership at Will" by notice given by one partner.

This follows from the definition of partnership at will given in clause 7.

Clause 44 mentions the grounds on which a partne may sue for dissolution of the firm. Most of the grounds are the same as those in section 254 of the Contract Act and a general ground has been added as clause (g).

Clause 45 corresponds to section 264 of the Contract Act, with this difference that the giving of a public notice of the dissolution by any partner is now essential; knowledge of the fact oth rwise would not prevent the liability from continuing.

Clauses 46 to 49 relate to the winding up of the business of the firm. Of these 47 and 49 correspond to sections 263 and 262 of the Contract Act respectively and the others are new. Clause 48 as to the mode of settling accounts between the partners is a great improvement in the law of partnership.

Clauses 50 to 52 are new provisions.

Clause 53 is a new provision restraining a partner from carrying on a similar business in the firm name until the affairs of the firm are completel wound up. It is complementary to clause 50.

Clause 54 relating to agreements in restraint of trade engrafts exception 2 to section 27 of the Contract Act with this addition that the agreement may extend to restraining the trade for a specified time.

Clause 55 relates to the sale of the goodwill of a firm and is entirely new. The term ' goodwill " has not been defined in this measure. The Bill uses this well known term without defining it and lays down the consequences which ordinarily follow when it is sold under that name. This clause definitely includes it as one of the assets of the firm.

CHAPTER VII - REGISTRATION OF FIRMS.

Clause 56 empowers the Government to exempt from the operation of this chapter any undeveloped area to which its provisions may not be suited.

Clause 58 reduces the particulars to be furnished to the minimum required for the information and benefit of third parties.

Clauses 59 to 67 deal with the scope and the extent of the work of the Registrar such as recording of alterations in firm name and place of business, noting in the Register of closing and opening of branches, noting of changes in names and addresses of partners, recording of changes in and dissolution of firms, recording of withdrawals of minors and rectification of mistake in Register, etc. The Registrar is a mere recording officer. He will have no power to enter into the accuracy of the statements contained in any document sent to him. Clause 65 gives the Civil Courts the necessary power of correction in cases of dispute.

Clause 68 makes the original documents filed with the Registrar conclusive evidence of the acts contained therein, as against any person who has signed them. A certified copy of the entry in the Register is made receivable in proof of its contents.

Clause 69 provides the pressure which is to be brought to bear on partners to have the firm and themselves registered.

Clause 70 imposes a penalty for making a false declaration in any document sent to the Registrar.

Clause 71 gives power to Government to make rules to supplement the provisions of the chapter, the rules being subject to the condition of previou publication.

CHAPTER VIII - SUPPLEMENTAL

Clauses 72 to 74.- Clause 72 provides the mode of giving public notice, wherever required, by the Regulation; clause 73 mentions the repeals and clause 74 gives the savings.

(7)

NOTIFICATION.

No. 1866--*L. C., dated* 19*th November* 1935.

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to define and amend the Law relating to Partnership is published for general information with the statement of objects and reasons.

By Order,

C. SUBRAHMANYA AIYAR,
Secretary,
Mysore Legislative Council.

BILL TO DEFINE AND AMEND THE LAW RELATING TO PARTNERSHIP.

WHEREAS it is expedient to define and amend the law relating to partnership; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Regulation may be called the Mysore Partnership Regulation, 193 — **Short title, extent and commencement.**

(2) It extends to the whole of Mysore.

(3) It shall come into force on 1st day of January 193

2. In this Regulation unless there is anything repugnant in the subject or context,— **Definitions.**

(*a*) an "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;

(*b*) "business" includes every trade, occupation and profession;

(*c*) "prescribed" means prescribed by rules made under this Regulation

(*d*) "third party" used in relation to a firm or to a partner therein means any person who is not a partner in the firm; and

(*e*) expressions used but not defined in this Regulation and defined in the Indian Contract Act, 1872, as in force in Mysore, shall have the meanings assigned to them in that Act.

Application of provisions of Act IX of 1872 as in force in Mysore.

3. The unrepealed provisions of the Indian Contract Act, 1872, as in force in Mysore, save in so far as they are inconsistent with the express provisions of this Regulation, shall continue to apply to firms.

CHAPTER II.

THE NATURE OF PARTNERSHIP.

Definition of "partnership," "partner," "firm" and "firm name."

4 "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm," and the name under which their business is carried on is called the "firm name."

Partnership not created by status.

5. The relation of partnership arises from contract and not from status;

and, in particular, the members of a Hindu undivided family carrying on a family business as such, are not partners in such business.

Mode of determining existence of partnership.

6. In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Explanation 1.—The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation 2.—The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business;

and, in particular, the receipt of such share or payment—

(*a*) by a lender of money to persons engaged or about to engage in any business;

(*b*) by a servant or agent as remuneration

(*c*) by the widow or child of a deceased partner, as annuity, or

(*d*) by a previous owner or partowner of the business, as consideration for the sale of the goodwill or share thereof,

does not of itself make the receiver a partner with the persons carrying on the business.

Partnership at will.

7. Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will".

Particular partnership.

8. A person may become a partner with another person in particular adventures or undertakings.

CHAPTER III.

Relations of partners to one another.

General duties of partners.

9. Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

Duty to indemnify for loss caused by fraud.

10. Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Determination of rights and duties of partners by contract between the partners.

11. (1) Subject to the provisions of this Regulation, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.

Agreements in restraint of trade.

(2) Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, as in force in Mysore, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

The conduct of the business.

12. Subject to contract between the partners —

(*a*) every partner has a right to take part in the conduct of the business;

(*b*) every partner is bound to attend diligently to his duties in the conduct of the business;

(*c*) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature

of the business without the consent of all the partners; and

(*d*) every partner has a right to have access to and to inspect and copy any of the books of the firm.

Mutual rights and liabilities.

13. Subject to contract between the partners—

(*a*) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

(*b*) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;

(*c*) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;

(*d*) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent. per annum;

(*e*) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him—

(i) in the ordinary and proper conduct of the business, and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and

(*f*) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

The property of the firm.

14. Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

Application of the property of the firm.

15. Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

Personal profits earned by partners.

16. Subject to contract between the partners,—

(*a*) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(*b*) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

17. Subject to contract between the partners,—

Rights and duties of partners after a change in the firm.

(*a*) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

after the expiry of the term of the firm, and

(*b*) where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will; and

where additional undertakings are carried out.

(*c*) where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

CHAPTER IV.

RELATIONS OF PARTNERS TO THIRD PARTIES.

Partner to be agent of the firm.

18. Subject to the provisions of this Regulation, a partner is the agent of the firm for the purposes of the business of the firm.

Implied authority of partner as agent of the firm.

19. (1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(*a*) submit a dispute relating to the business of the firm to arbitration,

(*b*) open a banking account on behalf of the firm in his own name,

(*c*) compromise or relinquish any claim or portion of a claim by the firm,

(*d*) withdraw a suit or proceeding filed on behalf of the firm,

(*e*) admit any liability in a suit or proceeding against the firm

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(*f*) acquire immoveable property on behalf of the firm,

(*g*) transfer immoveable property belonging to the firm, or

(*h*) enter into partnership on behalf of the firm

Extension and restriction of partner's implied authority

20. The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Partner's authority in an emergency.

21. A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

Mode of doing act to bind firm.

22. In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Effect of admissions by a partner.

23. An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Effect of notice to acting partner.

24. Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Liability of a partner for acts of the firm.

25. Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Liability of the firm for wrongful acts of a partner.

26. Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Liability of firm for misapplication by partners.

27. Where—

(*a*) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(*b*) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm,

the firm is liable to make good the loss.

Holding out.

28. (1) Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be

represented, to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

(2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Rights of transferee of a partner's interest.

29. (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Minors admitted to the benefits of partnership

30. (1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48:

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm:

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.

(7) Where such person becomes a partner,—

(*a*) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(*b*) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner,—

(*a*) his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice,

(*b*) his share shall not be liable for any acts of the firm done after the date of the notice, and

(*c*) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).

(9) Nothing in sub-sections (7) and (8) shall affect the provisions of section 28.

CHAPTER V.

IN-COMING AND OUT-GOING PARTNERS.

Introduction of a partner.

31. (1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner

Retirement of a partner.

32. (1) A partner may retire—

(*a*) with the consent of all the other partners,

(*b*) in accordance with an express agreement by the partners, or

(*c*) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Expulsion of a partner.

33. (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

(2) The provisions of sub-sections (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

Insolvency of a partner.

34. (1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

(2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

Liability of estate of deceased partner.

35. Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Rights of outgoing partner to carry on competing business.

36. (1) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not—

(*a*) use the firm name,

(*b*) represent himself as carrying on the business of the firm, or

(*c*) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Agreements in restraint of trade.

(2) A partner may make an agreement with his partners that on ceasing to be partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits; and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, as in force in Mysore, such agreement shall be valid if the restrictions imposed are reasonable.

Right of outgoing partner in certain cases to share subsequent profits.

37. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm:

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

Revocation of continuing guarantee by change in firm.

38. A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

CHAPTER VI.

Dissolution of a firm.

Dissolution of a firm.

39. The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm".

Dissolution by agreement.

40. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Compulsory dissolution.

41. A firm is dissolved—

(*a*) by the adjudication of all the parters or of all the partners but one as insolvent, or

(*b*) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership;

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Dissolution on the happening of certain contingencies.

42. Subject to contract between the partners a firm is dissolved—

(*a*) if constituted for a fixed term, by the expiry of that term;

(*b*) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

(*c*) by the death of a partner; and

(*d*) by the adjudication of a partner as an insolvent.

Dissolution by notice of partnership at will.

43. (*1*) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(*2*) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

Dissolution by the Court.

44. At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:—

(*a*) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(*b*) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;

(*c*) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;

(*d*) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;

(*e*) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1911, or has allowed it to be sold in the recovery of arrears of land revenue or

of any dues recoverable as arrears of land revenue due by the partner;

(*f*) that the business of the firm cannot be carried on save at a loss; or

(*g*) any other ground which renders it just and equitable that the firm should be dissolved.

Liability for acts of partners done after dissolution.

45. (*1*) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

2. Notices under sub-section (1) may be given by any partner.

Right of partners to have business wound up after dissolution.

46. On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

Continuing authority of partners for purposes of winding up.

47. After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

Mode of settlement of accounts between

48. In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:—

(*a*) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(*b*) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:—

(*i*) in paying the debts of the firm to third parties;

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(*ii*) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(*iii*) in paying to each partner rateably what is due to him on account of capital; and

(*iv*) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Payment of firm debts a of separate debts.

49. Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Personal profits earn after dissolution.

50. Subject to contract between the partners, the provisions of clause (*a*) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Return of premium or premature dissolution.

51. Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless—

(*a*) the dissolution is mainly due to his own misconduct, or

(*b*) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

Rights whe partnership contract is rescinded fo fraud or misrepresen tation.

52. Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(*a*) to a lien on, or a right of retention of, the surplus, or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;

(*b*) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and

(*c*) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.

Right to restrain from use of firm name or firm property.

53. After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm-name.

Agreements in restraint of trade.

54. Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits; and notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, as in force in Mysore, such agreement shall be valid if the restrictions imposed are reasonable.

Sale of goodwill after dissolution.

55. (1) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

Rights of buyer and seller of goodwill.

(2) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not—

(*a*) use the firm name

(*b*) represent himself as ess of the firm, or

(*c*) solicit the custom of persons who were dealing with the firm before its dissolution.

Agreements in restraint of trade.

(3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, as in force in Mysore, such agreement shall be valid if the restrictions imposed are reasonable.

CHAPTER VII.

REGISTRATION OF FIRMS.

Power to exempt from application of this Chapter.

56. The Government may, by notification in the official Gazette, direct that the provisions of this Chapter shall not apply to the whole or to any part of Mysore specified in the notification.

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57. (1) The Government may appoint Registrars of Firms for the purposes of this Regulation, and may define the areas within which they shall exercise their powers and perform their duties. Appointment of Registrars.

(2) Every Registrar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code as in force in Mysore.

58. (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating— Application for registration.

(*a*) the firm name,
(*b*) the place or principal place of business of the firm,
(*c*) the names of any other places where the firm carries on business,
(*d*) the date when each partner joined the firm,
(*e*) the names in full and permanent addresses of the partners, and
(*f*) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely:—

"Crown", "Emperor", "Empress", "Empire", "Imperial", "King", "Queen", "Royal", Maharaja, or words expressing or implying the sanction, approval or patronage of His Highness the Maharaja or the Government, except when the Government signifies its consent to the use of such words as part of the firm name by order in writing under the hand of one of the Secretaries of the Government.

59. When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement. Registration.

60. (1) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration, and signed and verified in the manner required under section 58. Recording of alterations in firm name and principal place of business

(2) When the Registrar is satisfied that the provisions of sub-section (1) have been duly complied with, he shall amend the entry relating to the firm in the Register of Firms in

accordance with the statement, he shall file it along with the statement relating to the firm filed under section 59.

Noting of closing and opening of branches.

61. When a registered firm discontinues business at any place or begins to carry on business at any place, such place not being its principal place of business, any partner or agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in the entry relating to the firm in the Register of Firms, and shall file the intimation along with the statement relating to the firm filed under section 59.

Noting of changes in names and addresses of partners.

62. When any partner in a registered firm alters his name or permanent address, an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61.

Recording of changes in and dissolution of a firm.

63. (1) When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under section 59.

Recording of withdrawal of a minor.

(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he or his agent specially authorised in this behalf, may give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in sub-section (1).

Rectification of mistakes.

64. (1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

(2) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.

Amendment of Register by order of Court.

65. A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm which is consequential upon its decision; and the Registrar shall amend the entry accordingly.

Inspection of Register and filed documents.

66. (1) The Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed

(2) All statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and on payment of such fee as may be prescribed.

Grant of copies.

67. The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

Rules of evidence.

68. (1) Any statement, intimation or notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.

(2) A certified copy of an entry relating to a firm in the Register of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.

Effect of non-registration.

69. (1) No suit to enforce a right arising from a contract or conferred by this Regulation shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—

(*a*) the enforcement of any right to ~~use~~ for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(*b*) the powers of a receiver or Court under the Mysore Insolvency Regulation, 1925, to realise the property of an insolvent partner.

(4) This section shall not apply—

(*a*) to firms or to partners in firms which have no place of business in Mysore, or whose places of business in Mysore are situated in areas to which, by notification under section 56, this Chapter does not apply, or

(*b*) to any suit or claim of set-off not exceeding one hundred rupees in value which, is of a kind specified in the first Schedule to the Mysore Small Cause Courts Regulation, 1911, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

Penalty for furnishing false particulars.

70. Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be

true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with fine or with both.

Power to make rules.

71. (1) The Government may make rules prescribing the fees which shall accompany documents sent to the Registrar of Firms, or which shall be payable for the inspection of documents in the custody of the Registrar of Firms, or for copies from the Register of Firms:

Provided that such fees shall not exceed the maximum fees specified in Schedule I.

(2) The Government may make rules—

(*a*) prescribing the form of statement submitted under section 58, and of the verification thereof;

(*b*) requiring statements, intimations and notices under sections 60, 61, 62 and 63 to be in prescribed form, and prescribing the form thereof;

(*c*) prescribing the form of the Register of Firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be amended or notes made therein;

(*d*) regulating the procedure of the Registrar when disputes arise;

(*e*) regulating the filing of documents received by the Registrar;

(*f*) prescribing conditions for the inspection of original documents;

(*g*) regulating the grant of copies;

(*h*) regulating the elimination of registers and documents;

(*i*) providing for the maintenance and form of an Index to the Register of Firms; and

(*j*) generally, to carry out the purposes of this Chapter.

(3) All rules made under this section shall be subject to the condition of previous publication.

CHAPTER VIII.

SUPPLEMENTAL.

Mode of giving public no

72. A public notice under this Regulation is given-

(*a*) where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under section 63, and by publication in the official Gazette and in at least one vernacular

newspaper circulating in the district where the firm to which it relates has its place or principal place of business, and

(*b*) in any other case, by publication in the official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

Repeals

73. The enactments mentioned in Schedule II are hereby repealed to the extent specified in the fourth column thereof.

Savings

74. Nothing in this Regulation or any repeal effected thereby shall affect or be deemed to affect—

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Regulation, or

(*b*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Regulation, or

(*c*) anything done or suffered before the commencement of this Regulation, or

(*d*) any enactment relating to partnership not expressly repealed by this Regulation, or

(*e*) any rule of insolvency relating to partnership, or

(*f*) any rule of law not inconsistent with this Regulation.

SCHEDULE I.

MAXIMUM FEES.

[*See* sub-section (*1*) of section 71.]

Document or act in respect of which the fee is payable	Maximum fee
Statement under section 58	Three rupees.
Statement under section 60	One rupee.
Intimation under section 61	One rupee.
Intimation under section 62	One rupee
Notice under section 63	One rupee.
Application under section 64	One rupee.
Inspection of the Register of Firms under sub-section (1) of section 66.	Eight annas for inspecting one volume of the Register.
Inspection of documents relating to a firm under sub-section (2) of section 66.	Eight annas for the inspection of all documents relating to one firm.
Copies from the Register of firms	Four annas for each hundred words or part thereof.

SCHEDULE II.

ENACTMENTS REPEALED.

(*See* section 73.)

Year	No.	Short title	Extent of repeal
	2	3	4
1872	IX	The Indian Contract Act, 1872.	Exceptions 2 & 3 to section 27. The whole of Chapter XI.

STATEMENT OF OBJECTS AND REASONS.

The law relating to partnership is contained in Chapter X of the Indian Contract Act, 1872, as in force in Mysore. Th inadequacy of the provisions contained therein has been recog nised for a long time as many important matters relating t partnership were left un-noticed in Chapter XI. In addition t these omissions, the development of trade and business has shown further matters on which legislation is required. In the absence of clear and definite rules on these points, the Indian Courts have held that Chapter XI of the Indian Contract Act is not exhaustive and have relied on analogies drawn from the English Law. To remove these defects, a separate Act providing for a satisfactory codification of the law relating to partnership was passed in British India in 1932.

The Indian Partnership Act of 1932 as well as the Indian Sale of Goods Act of 1930 (which has been recently adopted in Mysore) were drafted by Special Committee of leading lawyers, presided over by Sir B. C. Mitter. In their report on the Sale of Goods Bill, they observed.—

> "When Sir James Stephen moved the Indian Contract Bill, he admitted that it was not and could not pretend to be a complete code upon the branch of law to which it related. He, however, expressed a hope that in later years it would be easy to enact supplementary chapters relating to several branches of the law of contract which the bill did not touch. In our opinion, in view of the complexity of modern conditions, the time has now come when this process should be accelerated by embodying the different branches of law relating to contract in separate self-contained enactments."

The Sale of Goods Bill was the first of the series foreshadowed by the Special Committee and the Partnership Bill was the second.

The Indian Partnership Act is based upon the corresponding English Act of 1890 with deviations on some points in order to adapt the law to Indian conditions or to supplement it in places where it is incomplete or are supported by the views of authoritative commentators.

The law in Mysore has, however, remained the same as it was in 1872, in spite of the fact that the development of trade and business in Mysore, as in British India, has shown further matters on which legislation is required. It has therefore become necessary, in order to keep the law of partnership abreast of the developments of modern business relations, to remove the defects by enacting a separate measure on the lines of the Indian Partnership Act, 1932.

The Bill repeals and supersedes Chapter XI of the Contract Act. It makes considerable changes in definition and arrangement, gives effect to the mercantile view of a firm's continuity and adds provisions for voluntary registration of firms.

Chapter I deals with preliminary matters and definitions.

Chapter II deals with the nature of partnership. This law of partnership is made applicable only to the relationship created by contract and not to that which arises from status; in particular, members of a Hindu undivided family carrying on a family business as such are excluded from the application of this law.

Chapter III deals with the relations of partners to one another. The Indian Contract Act, 1872, as in force in Mysore, dealt with some of them in Sections 252, 253, 256, 257, 258 and 259. The present Bill deals with these relations in fuller details.

Chapter IV deals with the relation of partners to third parties. This chapter is mostly taken up with the statement and development of the principle that each partner is the agent of the firm.

Chapter V collects together and sets out in a convenient form all rules relating to the coming in of a new partner and all rules relating to the going out of a partner in so far as these rules do not relate to the dissolution of the firm or to the consequences of dissolution.

Chapter VI deals with the dissolution of a firm and lays down that the dissolution of a firm means the dissolution of the partnership relation between all the partners of a firm, as distinguished from the severance of the connection of one partner with the firm through retirement, expulsion or insolvency dealt with in the last chapter.

Chapter VII deals with the Registration of firms and lays down the procedure for the registration of partners and firms. It is not the intention to apply Chapter VII regarding Registration of firms and its incidents to the whole of the State or any

part of it, except by a special notification by the Government when conditions for its extension in any part of the State are considered suitable.

Chapter VIII, the last chapter, contains supplemental provisions regarding mode of giving notice, repeals and savings.

The following notes on clauses further explain the scope of the sections.

NOTES ON CLAUSES.

(*N.B.*—In the following notes Contract Act means the Indian Contract Act as in force in Mysore.)

Clause 2 gives explanations of certain expressions used in the Bill, *viz.*, (a) 'act of a firm,' (b) 'business,' (c) 'prescribed' and (d) 'third party'; (a), (c) and (d) are new and (b) is taken from the English Act; (e) enacts that other expressions used in the Bill are to be understood in the sense as defined in the Contract Act.

Clause 3 like Section 3 of the Sale of Goods Regulation, 1932, will make the Partnership Regulation a branch of the general law of contract. Sub clause (e) of clause 2, has the same object.

Clause 4. This clause contains the difficult definition of partnership' and the simple ones of 'partner' 'firm' and firm's name'. The definition of partnership is an improvement on that adopted in Section 239 of the Contract Act. The intention is to bring out more clearly the fundamental principle that partners when carrying on the business of the firm are agents as well as principals. The definition of 'partnership' contains three elements:—

(1) There must be an agreer
persons concerned;
(2) The agreement must be to share the profits of a
business; and
(3) the business must be carried on by all or any of the
persons concerned acting for all.

The first element relates to the voluntary contractual nature of partnership; the 2nd gives the motive which leads to the formation of firms, *i.e.*, the acquisition of gain and the 3rd shows that the persons of a group who conduct the business do so as agents for all the persons in the group and are therefore liable to account to all.

The Bill does not make agreement to share loss, a test of agreement of partnership, but takes the course of treating the sharing of losses as legal consequences arising out of the relation of partnership which is established otherwise.

Clause 5 emphasizes one of the elements in the definition,

viz., that partnership is the result of voluntary agreement. In view of the vast extent of non-contractual quasi partnership relations in India of which the Hindu trading family is the outstanding example, it is deemed expedient to insert this clause to prevent all possible doubt.

Clause 6 is intended to guide the courts in determining the existence of partnership. It is the real relation between the parties that has to be looked into and not merely the expressed intention. It is necessary to examine all the incidents of the relation between the parties as shown in written agreements, verbal agreements or mere conduct, to lay special stress on no particular fact and no particular legal element in partnership, but to take all the facts impartially into account and from them to deduce the real relation between the parties.

The explanations contain useful propositions of law for the guidance of courts, which may fairly be treated as rules subsidiary to and explanatory of the central rule contained in this clause.

Clause 7 gives a statutory name 'Partnership at will' to a partnership the duration of which has not been provided for and from which a partner can retire at any time by merely giving notice to the other partners.

Clause 8 is new and is inserted to meet cases where the business may be limited to particular adventures and undertakings, so that the partnership comes to an end as soon as the particular adventure or undertaking is finished. The practice of establishing 'particular partnership' is much favoured by firms with numerous branches and the practice should not be hampered by doubts regarding the extent of the liabilities of the particular partner.

CHAPTER III.

Relations of Partners to one Another.

Clause 9 corresponds to Section 257 of the Contract Act.

Clause 10 is new. It embodies in statute form what is ordinary law, *viz.*, a person must indemnify the loss suffered by another through his fraudulent conduct.

Clause 11, sub-clause (i) expresses the rule contained in Section 252 of the Contract Act. It is an expression of that most important of all principles of partnership law, *viz.*, that as far as possible, the partners should have freedom to arrange their own affairs amongst themselves. It will allow arrangements to be made from time to time formally or informally on all matters which affect partners only. In pursuance of this idea, the remaining clauses of this Chapter and some in Chapters 5 and 6 are "subject to contract between the partners" *i.e.*, they express

rules which are applicable in the absence of contracts varying them. Sub-clause (ii) reproduces exception (3) to Section 27 of the Contract Act. The subject matter fits in more aptly here and the exception is accordingly repealed.

Clause 12 deals with the conduct of business and sub-clauses (a) to (c) correspond to clauses (3) to (5) of Sec. 253 of the Contract Act, and sub-clause (d) gives to every partner a right to have access to and inspect and copy the books of the firm.

Clause 13 deals with the mutual rights and liabilities of partners. Sub-clauses (a) and (b) correspond to clauses (4) and (2) of Section 252 of the Contract Act. Sub-clauses (c), (d), (e) and (f) are entirely new.

Clauses 26 and 27 make the whole firm liable to third parties for wrongful acts or omissions of partners, and as it is desirable to provide for a right of indemnity to the other partners for loss caused to the firm by the wrongful acts or omissions of a partner, clause 10 and sub-clause (f) of clause 13 have been inserted. Wilful neglect in clause 13 (f) means that degree of neglect shown by abstention from an obvious duty, attended by a knowledge of the likely results of the abstention.

Clause 14 defines the property of the firm and contains the substance of Sec. 253(1) of the Contract Act. The goodwill of the business is specifically included among the property of the firm. It will automatically be included in all accounts for the determination of shares.

Clause 15 enjoins the application of the property of the firm exclusively for the purposes of the business of the firm.

Clause 16 deals with the personal profits earned by partners and corresponds to sections 258 and 259 of the Contract Act.

Clause 17 sub-clauses (a) and (c) are new and define the mutual rights and duties of the partners where a change in the constitution of the firm occurs and where a firm formed for particular undertakings proceeds to carry out other undertakings. Sub-clause (b) corresponds to section 256 of the Contract Act

CHAPTER IV.

Relation of Partners to Third Parties.

Clause 18 lays down the first principle that each partner is the agent of the firm.

Clause 19 sub clause (1) defines the general extent of a partner's agency and is similar in substance to Sec. 251 of the Contract Act. This authority of a partner as agent is designated by a convenient term, *viz.*, 'implied authority.'

In sub-clause (2), the extent and limitations of a partner's implied authority are stated. The delimitations of a partner's implied authority in sub-clause (1) is not precise. Certain rules

have already been established by judicial decisions and are known in business circles, and these are embodied in this clause.

Clause 20 embodies the exception clause in Sec. 251 of the Contract Act. This is an enabling provision whereby partners may authorise a trusted partner to do necessary acts which are in excess of implied authority, and whereby they may restrict the activities of an inexperienced partner.

Clause 21 gives emergency power to a partner on the lines of the power of an agent under Sec. 212 of the Contract Act.

Clause 22 states that acts do not bind a firm unless they are done in a certain way.

Clauses 23 and 24 which deal with the effect of admissions by a partner and of notice to a partner who habitually acts in the business of the firm, are new provisions.

Clause 25. This is the general statement of the liability of a partner for the liabilities of the firm. Sections 249 and 250 of the Contract Act merely provide that each partner is liable for all the liabilities of the firm but does not say that the partners are all liable jointly and severally. Sec. 43 of the Contract Act makes joint promissors generally liable jointly and severally and this general principle has been applied to partnership liabilities in India. The clause expresses this principle. The liability relates to both contracts and torts.

Clauses 26 and 27 describe the tortious acts of the partners for which a firm is liable.

Clause 28 introduces the doctrine of "holding out." It represents sections 245 and 246 of the Contract Act.

Clause 29 like clause 30 relates to persons who are third parties, but have a footing inside the firm. This clause relates to assignees of the whole of a partner's share in the firm. These persons may be complete strangers to the non-transferring partners and may be personally objectionable to them. The clause gives the assignees very limited rights.

Clause 30. Under the English law, there is nothing to preclude an infant from entering into a contract of partnership though, speaking generally, while he is an infant, he incurs no liability and is not responsible for the debts of the firm and when he comes of age or even before, he may disaffirm past transactions. In view of Section 11 of the Indian Contract Act and the decision of the Privy Council in Mahori Bibi's case about the general incapacity of an infant to enter into a contract, there will be no justification with reference to the law of partnership only for departing from this principle of the Indian Law. At the same time, it has been the law in India that a minor becomes personally liable for the obligations of the firm if he does not repudiate the partnership within a reasonable time after his attaining age, *vide* Sections 247 and 248 of the Contract

Act. Section 247 has been interpreted by the Judicial Committee to mean that a minor cannot be a partner in the firm. The Contract Act is defective, however, in that it does not in express terms, provide that the minor on attaining age becomes a partner if he does not repudiate his connection with the firm within a reasonable time, though this principle is implied in Section 248. The Act is also defective in omitting to lay down fully the rights and remedies of a minor sharer as such. Clause 30, while retaining the existing law as to the minor's position, is intended to remedy the defects pointed out.

CHAPTER V.

IN-COMING AND OUT-GOING PARTNERS.

Clause 31 deals with the introduction of a new partner and lays down that such a new partner will not be liable for any act of the firm done before his introduction; it embodies the principles in Sections 253 (6) and 249 of the Contract Act.

Clause 32 relates to the retirement of a partner. Sub-clause (1) embodies the rules in Section 253 (8) and (9) of the Contract Act. The other sub-clauses are new.

Clause 33 deals with the expulsion of a partner and is a new provision.

Clause 34 deals with the insolvency of a partner. This introduces a change in the law on the subject, for under the Contract Act, insolvency itself was no ground for dissolution until a court dissolved it at the suit of a partner *vide* Section 254 (2) of the Contract Act. Under Section 42 (*d*) as well as under this section, a firm is dissolved by the adjudication of a partner as an insolvent unless there is a contract to the contrary.

Clause 35 deals with the liabilility of the estate of a deceased partner and corresponds to Section 261 of the Contract Act.

Clause 36 relates to restrictions which are imposed on the activities of outgoing partners to prevent unfair competition with the firm and is a new provision. Sub-clause (2) is derived from the second exception to Section 27 of the Contract Act which will be repealed.

Clause 37 declares the right of an outgoing partner or his representative to a share of the profits or interest pending the final settlement of accounts.

Clause 38 deals with the revocation of continuing guarantee by change in the firm and corresponds to Section 260 of the Contract Act.

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CHAPTER VI.

Dissolution of a Firm.

Clsuse 39 contains the definition of 'dissolution of a firm', *viz.*, dissolution of partnership relation between all the parties of a firm as distinguished from the severance of the connection of one partner only with the firm through retirement, expulsion, etc., which is dealt with in the last chapter.

Clause 40 covers the cases where all parties agree that the firm should be dissolved and also the cases where the dissolution occurs in pursuance of a contract previously made between the parties.

Clause 41 deals with compulsory dissolution, *i.e.*, of a dissolution in spite of any contract to the contrary and the latter portion of the clause corresponds to Section 255 of the Contract Act.

Clause 42 enumerates certain contingencies on the happening of which the firm stands dissolved where there is no contract to the contrary.

Clause 43 relates to the dissolution of a 'Partnership at will" by notice given by one partner.

This follows from the definition of partnership at will given in clause 7.

Clause 44 mentions the grounds on which a partner may sue for dissolution of the firm. Most of the grounds are the same as those in Section 254 of the Contract Act and a general ground has been added as clause (*g*).

Clause 45 corresponds to Section 264 of the Contract Act, with this difference that the giving of a public notice of the dissolution by any partner is now essential; knowledge of the fact otherwise would not prevent the liability from continuing.

Clauses 46 to 49 relate to the winding up of the business of the firm. Of these, 47 and 49 correspond to Sections 263 and 262 of the Contract Act respectively and the others are new. Clause 48 as to the mode of settling accounts between the partners is a great improvement in the law of partnership.

Clauses 50 *to* 52 are new provisions.

Clause 53 is a new provision restraining a partner from carrying on a similar business in the firm name until the affairs of the firm are completely wound up. It is complementary to clause 50.

Clause 54, relating to agreements in restraint of trade, engrafts exception 2 to Section 27 of the Contract Act with this addition that the agreement may extend to restraining the trade for a specified time.

Clause 55 relates to the sale of the goodwill of a firm and is entirely new. The term "goodwill" has not been defined in this measure. The Bill uses this well known term without defining it and lays down the consequences which ordinarily follow when it is sold under that name. This clause definitely includes it as one of the assets of the firm.

CHAPTER VII.

Registration of Firms.

Clause 56 empowers the Government to exempt from the operation of this chapter any undeveloped area to which its provisions may not be suited.

Clause 58 reduces the particulars to be furnished to the minimum required for the information and benefit of third parties.

Clauses 59 *to* 67 deal with the scope and the extent of the work of the Registrar such as recording of alterations in firm name and place of business, noting in the Register of Firms the closing and opening of branches, noting of changes in names and addresses of partners, recording of changes in and dissolution of a firm, recording of withdrawals of minors and rectification of mistakes in Register, etc. The Registrar is a mere recording officer. He will have no power to enter into the accuracy of the statements contained in any document sent to him. Clause 65 gives the Civil Courts the necessary power of correction in cases of dispute.

Clause 68 makes the original documents filed with the Registrar conclusive evidence of the acts contained therein, as against any person who has signed them. A certified copy of the entry in the Register is made receivable in proof of its contents.

Clause 69 provides the pressure which is to be brought to bear on partners to have the firm and themselves registered.

Clause 70 imposes a penalty for making a false declaration in any document sent to the Registrar.

Clause 71 gives power to Government to make rules to supplement the provisions of the chapter, the rules being subject to the condition of previous publication.

CHAPTER VIII.

Supplemental.

Clauses 72 *to* 74.—Clause 72 provides the mode of giving public notice, wherever required, by the Regulation; clause 73 mentions the repeals and clause 74 gives the savings.

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Appendix F G—1]

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SUBJECT.....

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Section

File No.

Serial No.

Diary No. of letter replied to.....

No. Pb432-29 Ene Prop

To 1) D. Srinivasa ... B.A.
2) S. Abdul Wajid Esq B.A.
3) A. R. Nagoomara... Esq, B.A.,
4) M. G. Mehta Esq B.A. LL.B.
5) P. Subbaraya Chetty
6) Rao Bahadur M. K. Govindaraj
7) J. Mahomed Imam Esq. B.A., B.
8) Rajacharilu Avl Rao Sahib M. C. Narayanaswamy Rao, B.A.

General and Revenue Secretariat

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the *193* .

Date of issue 27.3.36

Signed by M.C.S.J.

Members L.C.

A meeting of the Select Committee appointed to consi the Partnerships Bill will be held in the Chambers of the Hon Members of Committee

List of enclosures.....

Copied by 30/3/36

Examined by.....

46

Public Offices Buildings,

Basingstoke at 1 P.m.

Tuesday 7th April 1936

~~Tuesday~~ the ~~7th~~ March 1936

A copy of the proceedings of R.A. & L.C. in regard to this G.S. & Thos. Smith Scheme.

Secy

copy to P.A. to M/S

" L.C. Office

" C.B.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE,

General and Revenue Secretariat 97

No. R. P 6422-29/Sec(Bnp) Dated, Bangalore, ... 193....

29th March 37

Official Memorandum.

To

1. D.Srinivasa Iyengar Esq., B.A.,
Excise Commissioner in Mysore.

2. S.Abdul Wajid Esq., B.A.,
Director of Industries and Commerce in Mysore.

3. A.R.Nageswara Iyer Esq., B.A., B.L.,
Government Advocate in Mysore.

4. Gulam Mohadin Mekhri Esq., B.A., LL.B.,
Registrar of Co-operative Societies in Mysore.

5. P.Subbarama Chetty Esq.,
Member, Mysore Legislative Council.

6. Rao Bahadur Mr.D.K.Garudachar,
Member, Mysore Legislative Council.

7. J.Mahomed Imam Esq., B.A., B.L.,
Member, Mysore Legislative Council.

8. Rajacharitavisarada Rao Sahib
Mr.C.Hayavadana Rao, B.A., B.L.,
Member, Mysore Legislative Council.

A meeting of the Select Committee appointed to consider the Partnership Bill will be held in the chambers of the First Member of Council, Public Office Buildings, Bangalore at 1 P.M. on Tuesday the 7th April 1930. A copy of the proceedings of the Representative Assembly and Legislative Council in regard to this Bill is also sent herewith.

By order,

Sd. C.Subrahmanya Aivar.

Secretary, Mysore Legislative Council.

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REPORT OF THE SELECT COMMITTEE ON THE BILL TO DEFINE AND AMEND THE LAW RELATING TO PARTNERSHIP

We, the Members of the Select Committee to which the Bill to define and amend the Law relating to Partnership was referred, have carefully examined the clauses of the Bill and have no changes to suggest. Minor alterations have been made in clauses 56 and 70 as follows:

1) Clause 56 has been recast as under:

> "The Government may, by notification in the Official Gazette, extend the provisions of this Chapter to the whole or any part of Mysore specified in the notification or cancel any such notification."

2) In clause 70, insert the word "simple" before "imprisonment" and the words "which may extend to Rs.500/-" after the words "or with fine".

As the Bill has not been changed in any material particular, we recommend that it need not be republished.

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NOTIFICATION.

No. 1866--*L. C., dated 19th November* 1935.

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to define and amend the Law relating to Partnership is published for general information with the statement of objects and reasons.

By Order,

C. SUBRAHMANYA AIYAR,
Secretary,
Mysore Legislative Council

[N.B.—Portions deleted by the Select Committee are enclosed in square brackets and portions added are printed in italics]

BILL TO DEFINE AND AMEND THE LAW RELATING TO PARTNERSHIP.

WHEREAS it is expedient to define and amend the law relating to partnership; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Regulation may be called the Mysore Partnership Regulation, 193

(2) It extends to the whole of Mysore.

(3) It shall come into force on 1st day of 193

Definitions.

2. In this Regulation unless there is anything repugnant in the subject or context,—

(*a*) an "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;

(*b*) "business" includes every trade, occupation and profession;

(c) "prescribed" means prescribed by rules made under this Regulation;

(d) "third party" used in relation to a firm or to a partner therein means any person who is not a partner in the firm; and

(e) expressions used but not defined in this Regulation and defined in the Indian Contract Act, 1872, as in force in Mysore, shall have the meanings assigned to them in that Act.

Application of provisions of Act IX of 1872 as in force in Mysore.

3. The unrepealed provisions of the Indian Contract Act, 1872, as in force in Mysore, save in so far as they are inconsistent with the express provisions of this Regulation, shall continue to apply to firms.

CHAPTER II.

THE NATURE OF PARTNERSHIP

Definition of "partnership," "partner," "firm" and "firm name."

4. "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm," and the name under which their business is carried on is called the "firm name."

Partnership not created by status.

5. The relation of partnership arises from contract and not from status;

and, in particular, the members of a Hindu undivided family carrying on a family business as such, are not partners in such business.

Mode of determining existence of partnership.

6. In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties as shown by all relevant facts taken together.

Explanation 1.—The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation 2.—The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business;

and, in particular, the receipt of such share or payment—

(a) by a lender of money to persons engaged or about to engage in any business,

(b) by a servant or agent as remuneration,

(*c*) by the widow or child of a deceased partner, as annuity, or

(*d*) by a previous owner or partowner of the business, as consideration for the sale of the goodwill or share thereof,

does not of itself make the receiver a partner with the persons carrying on the business.

Partnership at will.

7. Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will'

Particular partnership.

8. A person may become a partner with another person in particular adventures or undertakings.

CHAPTER III.

RELATIONS OF PARTNERS TO ONE ANOTHER.

General duties of partners.

9. Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

Duty to indemnify for loss caused by fraud.

10. Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Determination of rights and duties of partners by contract between the partners.

11. (1) Subject to the provisions of this Regulation, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.

Agreements in restraint of trade.

(2) Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, as in force in Mysore, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

The conduct of the business.

12. Subject to contract between the partners —

(*a*) every partner has a right to take part in the conduct of the business;

(*b*) every partner is bound to attend diligently to his duties in the conduct of the business;

(*c*) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature

of the business without the consent of all the partners; and

(*d*) every partner has a right to have access to and to inspect and copy any of the books of the firm.

Mutual right and liabilities.

13. Subject to contract between the partners—

(*a*) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

(*b*) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;

(*c*) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;

(*d*) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent. per annum;

(*e*) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him—

(i) in the ordinary and proper conduct of the business; and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and

(*f*) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

The property of the firm.

14. Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

Application of the property of the firm

15. Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

Personal profits earned by partners.

16. Subject to contract between the partners,—

(*a*) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(*b*) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

17. Subject to contract between the partners,—

Rights and duties of partners after a change in the firm.

(*a*) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

after the expiry of the term of the firm, and

(*b*) where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will; and

where additional undertakings are carried out.

(*c*) where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

CHAPTER IV.

RELATIONS OF PARTNERS TO THIRD PARTIES.

Partner to be agent of the firm.

18. Subject to the provisions of this Regulation, a partner is the agent of the firm for the purposes of the business of the firm.

Implied authority of partner as agent of the firm.

19. (1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his ' implied authority ".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(*a*) submit a dispute relating to the business of the firm to arbitration,

(*b*) open a banking account on behalf of the firm in his own name,

(*c*) compromise or relinquish any claim or portion of a claim by the firm,

(*d*) withdraw a suit or proceeding filed on behalf of the firm,

(*e*) admit any liability in a suit or proceeding against the firm,

(*f*) acquire immoveable property on behalf of the firm,

(*g*) transfer immoveable property belonging to the firm, or

(*h*) enter into partnership on behalf of the firm.

Extension and restriction of partner's implied authority

20. The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Partner's authority in an emergency.

21. A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

Mode of doing act to bind firm.

22. In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Effect of admissions by a partner.

23. An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Effect of notice to acting partner.

24. Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Liability of a partner for acts of the firm.

25. Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Liability of the firm for wrongful acts of a partner

26. Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Liability of firm for misapplication by partners.

27. Where—

(*a*) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(*b*) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm,

the firm is liable to make good the loss.

Holding out.

28. (1) Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be

represented, to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

(2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Rights of transferee of a partner's interest.

29. (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Minors admitted to the benefits of partnership

30. (1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48:

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm:

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.

(7) Where such person becomes a partner,—

(*a*) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(*b*) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner,—

(*a*) his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice;

(*b*) his share shall not be liable for any acts of the firm done after the date of the notice, and

(*c*) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).

(9) Nothing in sub-sections (7) and (8) shall affect the provisions of section 28

CHAPTER V

IN-COMING AND OUT-GOING PARTNERS.

Introduction of a partner.

31. (1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

Retirement of a partner

32. (1) A partner may retire—

(*a*) with the consent of all the other partners,

(*b*) in accordance with an express agreement by the partners, or

(*c*) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Expulsion a partner.

33. (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

(2) The provisions of sub-sections (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

Insolvency of a partne

34. (1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

(2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

Liability of estate of deceased partner.

35. Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Rights of outgoing partner to carry on competing business.

36. (1) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not—

(*a*) use the firm name,

(*b*) represent himself as carrying on the business of the firm, or

(*c*) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Agreements in restraint of trade.

(2) A partner may make an agreement with his partners that on ceasing to be partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits; and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, as in force in Mysore, such agreement shall be valid if the restrictions imposed are reasonable.

Right of outgoing partner in certain cases to share subsequent profits.

37. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm:

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

Revocation of continuing guarantee by change in firm.

38. A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

CHAPTER VI.

Dissolution of a firm.

Dissolution of a firm.

39. The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm".

Dissolution by agreement.

40. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Compulsory dissolution.

41. A firm is dissolved—

(*a*) by the adjudication of all the parters or of all the partners but one as insolvent, or

(*b*) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership;

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Dissolution on the happening of certain contingencies.

42. Subject to contract between the partners a firm is dissolved—

(*a*) if constituted for a fixed term, by the expiry of that term;

(*b*) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

(*c*) by the death of a partner; and

(*d*) by the adjudication of a partner as an insolvent.

Dissolution by notice of partnership at will.

43. (*1*) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(*2*) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

Dissolution by the Court.

44. At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:—

(*a*) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(*b*) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;

(*c*) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;

(*d*) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;

(*e*) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1911, or has allowed it to be sold in the recovery of arrears of land revenue or

of any dues recoverable as arrears of land revenue due by the partner;

(*f*) that the business of the firm cannot be carried on save at a loss; or

(*g*) on any other ground which renders it just and equitable that the firm should be dissolved.

Liability for acts of partners done after dissolution.

45. (*1*) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

2. Notices under sub-section (1) may be given by any partner.

Right of partners to have business wound up after dissolution.

46. On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

Continuing authority of partners for purposes of winding up.

47. After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

Mode of settlement of accounts between partners.

48. In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:—

(*a*) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(*b*) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:—

(*i*) in paying the debts of the firm to third parties;

(*ii*) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(*iii*) in paying to each partner rateably what is due to him on account of capital; and

(*iv*) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Payment of firm debts and of separate debts.

49. Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Personal profits earned after dissolution.

50. Subject to contract between the partners, the provisions of clause (*a*) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Return of premium on premature dissolution.

51. Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless—

(*a*) the dissolution is mainly due to his own misconduct, or

(*b*) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

Rights where partnership contract is rescinded for fraud or misrepresentation.

52. Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(*a*) to a lien on, or a right of retention of, the surplus, or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;

(*b*) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and

(*c*) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.

Right to restrain from use of firm name or firm property.

53. After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Agreements in restraint of trade.

54. Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits; and notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, as in force in Mysore, such agreement shall be valid if the restrictions imposed are reasonable.

Sale of goodwill after dissolution.

55. (1) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

Rights of buyer and seller of goodwill.

(2) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not—

(*a*) use the firm name;

(*b*) represent himself as carrying on the business of the firm, or

(*c*) solicit the custom of persons who were dealing with the firm before its dissolution.

Agreements in restraint of trade.

(3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, as in force in Mysore, such agreement shall be valid if the restrictions imposed are reasonable.

CHAPTER VII.

REGISTRATION OF FIRMS.

Exemption from application of this Chapter.

56. The Government may, by notification in the official Gazette, direct that the provisions of this Chapter shall not apply to the whole or to any part of Mysore specified in the notification.

57. (1) The Government may appoint Registrars of Firms for the purposes of this Regulation, and may define the areas within which they shall exercise their powers and perform their duties. Appointment of Registrars.

(2) Every Registrar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code as in force in Mysore.

58. (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating— Application for registration.

(*a*) the firm name,
(*b*) the place or principal place of business of the firm,
(*c*) the names of any other places where the firm carries on business,
(*d*) the date when each partner joined the firm,
(*e*) the names in full and permanent addresses of the partners, and
(*f*) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely:—

"Crown", "Emperor", "Empress", "Empire", "Imperial", "King", "Queen", "Royal", Maharaja, or words expressing or implying the sanction, approval or patronage of His Highness the Maharaja or the Government, except when the Government signifies its consent to the use of such words as part of the firm name by order in writing under the hand of one of the Secretaries of the Government.

59. When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement. Registration

60. (1) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration, and signed and verified in the manner required under section 58. Recording of alterations in firm name and principal place of business.

(2) When the Registrar is satisfied that the provisions of sub-section (1) have been duly complied with, he shall amend the entry relating to the firm in the Register of Firms in

accordance with the statement, and shall file it along with the statement relating to the firm filed under section 59.

Noting of closing and opening of branches.

61. When a registered firm discontinues business at any place or begins to carry on business at any place, such place not being its principal place of business, any partner or agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in the entry relating to the firm in the Register of Firms, and shall file the intimation along with the statement relating to the firm filed under section 59.

Noting of changes in names and addresses of partners.

62. When any partner in a registered firm alters his name or permanent address, an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61

Recording of changes in and dissolution of a firm.

63. (1) When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under section 59.

Recording of withdrawal of a minor

(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he or his agent specially authorised in this behalf, may give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in sub-section (1).

Rectification of mistakes.

64. (1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

(2) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.

Amendment of Register by order of Court.

65. A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm which is consequential upon its decision; and the Registrar shall amend the entry accordingly.

Inspection of Register and filed documents.

66. (1) The Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed

(2) All statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and on payment of such fee as may be prescribed.

Grant of copies.

67. The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

Rules of evidence.

68. (1) Any statement, intimation or notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.

(2) A certified copy of an entry relating to a firm in the Register of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.

Effect of non-registration.

69. (1) No suit to enforce a right arising from a contract or conferred by this Regulation shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—

(*a*) the enforcement of any right to use for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(*b*) the powers of a receiver or Court under the Mysore Insolvency Regulation, 1925, to realise the property of an insolvent partner.

(4) This section shall not apply—

(*a*) to firms or to partners in firms which have no place of business in Mysore, or whose places of business in Mysore are situated in areas to which, by notification under section 56, this Chapter does not apply, or

(*b*) to any suit or claim of set-off not exceeding one hundred rupees in value which, is of a kind specified in the first Schedule to the Mysore Small Cause Courts Regulation, 1911, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

Penalty for furnishing false particulars.

70. Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be

which may extend
to Rupees
Five hundred

true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with fine, or with both.

71. (1) The Government may make rules prescribing the fees which shall accompany documents sent to the Registrar of Firms, or which shall be payable for the inspection of documents in the custody of the Registrar of Firms, or for copies from the Register of Firms :

Provided that such fees shall not exceed the maximum fees specified in Schedule I.

(2) The Government may make rules—

(*a*) prescribing the form of statement submitted under section 58, and of the verification thereof;

(*b*) requiring statements, intimations and notices under sections 60, 61, 62 and 63 to be in prescribed form, and prescribing the form thereof;

(*c*) prescribing the form of the Register of Firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be amended of notes made therein;

(*d*) regulating the procedure of the Registrar when disputes arise;

(*e*) regulating the filing of documents received by the Registrar;

(*f*) prescribing conditions for the inspection of original documents;

(*g*) regulating the grant of copies;

(*h*) regulating the elimination of registers and documents;

(*i*) providing for the maintenance and form of an Index to the Register of Firms; and

(*j*) generally, to carry out the purposes of this Chapter.

(3) All rules made under this section shall be subject to the condition of previous publication.

CHAPTER VIII.

SUPPLEMENTAL.

Mode of giving public notice.

72. A public notice under this Regulation is given—

(*a*) where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under section 63, and by publication in the official Gazette and in at least one vernacular

newspaper circulating in the district where the firm to which it relates has its place or principal place of business, and

(*b*) in any other case, by publication in the official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

Repeals.

73. The enactments mentioned in Schedule II are hereby repealed to the extent specified in the fourth column thereof.

Savings.

74. Nothing in this Regulation or any repeal effected thereby shall affect or be deemed to affect—

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Regulation, or

(*b*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Regulation, or

(*c*) anything done or suffered before the commencement of this Regulation, or

(*d*) any enactment relating to partnership not expressly repealed by this Regulation, or

(*e*) any rule of insolvency relating to partnership, or

(*f*) any rule of law not inconsistent with this Regulation

SCHEDULE I.

Maximum Fees.

[*See* sub-section (*1*) of section 71.]

Document or act in respect of which the fee is payable	Maximum fee
Statement under section 58	Three rupees.
Statement under section 60	One rupee.
Intimation under section 61	One rupee.
Intimation under section 62	One rupee
Notice under section 63	One rupee.
Application under section 64	One rupee.
Inspection of the Register of Firms under sub-section (1) of section 66.	Eight annas for inspecting one volume of the Register.
Inspection of documents relating to a firm under sub-section (2) of section 66.	Eight annas for the inspection of all documents relating to one firm.
Copies from the Register of firms	Four annas for each hundred words or part thereof.

SCHEDULE II.

ENACTMENTS REPEALED.

(*See* section 73.)

Year	No.	Short title	Extent of repeal
	2	3	4
1872	IX	The Indian Contract Act, 1872.	Exceptions 2 & 3 to section 27. The whole of Chapter XI.

STATEMENT OF OBJECTS AND REASONS.

The law relating to partnership is contained in Chapter XI of the Indian Contract Act, 1872, as in force in Mysore. The inadequacy of the provisions contained therein has been recognised for a long time as many important matters relating to partnership were left un-noticed in Chapter XI. In addition to these omissions, the development of trade and business has shown further matters on which legislation is required. In the absence of clear and definite rules on these points, the Indian Courts have held that Chapter XI of the Indian Contract Act is not exhaustive and have relied on analogies drawn from the English Law. To remove these defects, a separate Act providing for a satisfactory codification of the law relating to partnership was passed in British India in 1932.

The Indian Partnership Act of 1932 as well as the Indian Sale of Goods Act of 1930 (which has been recently adopted in Mysore) were drafted by Special Committee of leading lawyers, presided over by Sir B. C. Mitter. In their report on the Sale of Goods Bill, they observed.—

> "When Sir James Stephen moved the Indian Contract Bill, he admitted that it was not and could not pretend to be a complete code upon the branch of law to which it related. He, however, expressed a hope that in later years it would be easy to enact supplementary chapters relating to several branches of the law of contract which the bill did not touch. In our opinion, in view of the complexity of modern conditions, the time has now come when this process should be accelerated by embodying the different branches of law relating to contract in separate self-contained enactments."

The Sale of Goods Bill was the first of the series foreshadowed by the Special Committee and the Partnership Bill was the second.

NOTIFICATION.

No. Re. 467—L. C. 1-35-5, dated Bangalore, the 11th April 1936.

Under standing order No. 49 of the standing orders for the conduct of business of the Mysore Legislative Council, the following report of the select committee on the Bill to define and amend the Law relating to Partnership is published for general information.

By Order,
C. SUBRAHMANYA IYER,
Secretary,
Mysore Legislative Council.

Report of the Select Committee on the Bill to define and amend the Law relating to Partnership.

We, the Members of the Select Committee to which the Bill to define and amend the Law relating to Partnership was referred, have carefully examined the clauses of the Bill and have no changes to suggest. Minor alterations have been made in Clauses 56 and 70 as follows :—

(1) Clause 56 has been recast as under :

"The Government may, by notification in the Official *Gazette*, extend the provisions of this chapter to the whole or any part of Mysore specified in the notification or cancel any such notification."

(2) In Clause 70, insert the word "simple" before "imprisonment" and the words "which may extend to Rs. 500" after the words "or with fine."

As the Bill has not been changed in any material particular, we recommend that it need not be republished.

S. P. Rajagopalachari (*Chairman*).
J. Mahomed Imam.
B. K. Garuda Char.
C. Hayavadana Rao.
P. Subbarama Chetty.
A. R. Nagesvara Iyer.
S. Abdul Wajid.
M. G. Mehkri.
D. Srinivasa Iyengar.

BANGALORE,
Dated 7th April 1936.

Printed by the Superintendent at the Government Press, Bangalore.

BILL TO DEFINE AND AMEND THE LAW RELATING TO PARTNERSHIP.

[As Amended by the Select Committee.]

[*N.B.*—Portions deleted by the Select Committee are enclosed in square brackets and portions added are printed in italics.]

BILL TO DEFINE AND AMEND THE LAW RELATING TO PARTNERSHIP.

[AS AMENDED BY THE SELECT COMMITTEE.]

WHEREAS it is expedient to define and amend the law relating to partnership; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short tit extent an commenc ment.

1. (1) This Regulation may be called the Mysore Partnership Regulation, 193 .

(2) It extends to the whole of Mysore.

(3) It shall come into force on 1st day of 193 .

Definitio

2. In this Regulation unless there is anything repugnant in the subject or context,—

(*a*) an "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;

(*b*) "business" includes every trade, occupation and profession;

(*c*) "prescribed" means prescribed by rules made under this Regulation;

(*d*) "third party" used in relation to a firm or to a partner therein means any person who is not a partner in the firm; and

(*e*) expressions used but not defined in this Regulation and defined in the Indian Contract Act, 1872, as in force in Mysore, shall have the meanings assigned to them in that Act.

Applicatic provisions Act IX of 1872 as in force in Mysore.

3. The unrepealed provisions of the Indian Contract Act, 1872, as in force in Mysore, save in so far as they are inconsistent with the express provisions of this Regulation, shall continue to apply to firms.

CHAPTER II.

THE NATURE OF PARTNERSHIP.

Definition of "partnership," "partner," "firm" and "firm name."

4. "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm," and the name under which their business is carried on is called the "firm name."

Partnership not created by status.

5. The relation of partnership arises from contract and not from status;

and, in particular, the members of a Hindu undivided family carrying on a family business as such, are not partners in such business.

Mode of determining existence o partnership.

6. In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Explanation 1.—The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation 2.—The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business;

and, in particular, the receipt of such share or payment—

(*a*) by a lender of money to persons engaged or about to engage in any business,

(*b*) by a servant or agent as remuneration,

(*c*) by the widow or child of a deceased partner, as annuity, or

(*d*) by a previous owner or part-owner of the business, as consideration for the sale of the goodwill or share thereof,

does not of itself make the receiver a partner with the persons carrying on the business.

Partnership at will.

7. Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will."

Particular partnership.

8. A person may become a partner with another person in particular adventures or undertakings.

CHAPTER III.

RELATIONS OF PARTNERS TO ONE ANOTHER.

General duties of partners.

9. Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

Duty to indemnify for loss caused by fraud.

10. Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Determination of rights and duties of partners by contract between the partners.

11. (1) Subject to the provisions of this Regulation, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.

Agreements in restraint of trade.

(2) Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, as in force in Mysore, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

The conduct of the business.

12. Subject to contract between the partners —

(*a*) every partner has a right to take part in the conduct of the business;

(*b*) every partner is bound to attend diligently to his duties in the conduct of the business;

(*c*) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners; and

(*d*) every partner has a right to have access to and to inspect and copy any of the books of the firm.

Mutual rights and liabilities.

13. Subject to contract between the partners—

(*a*) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

(*b*) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;

(*c*) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;

(*d*) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent per annum;

(*e*) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him—

(i) in the ordinary and proper conduct of the business, and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and

(*f*) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

The property of the firm.

14. Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

Application of the property of the firm.

15. Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

Personal profits earned by partners.

16. Subject to contract between the partners,—

(*a*) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(*b*) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

17. Subject to contract between the partners,—

Rights and duties of partners after a change in the firm.

(*a*) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

after the expiry of the term of the firm, and

(*b*) where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so

far as they may be consistent with the incidents of partnership at will; and

(*c*) where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings. where additional undertakings are carried out.

CHAPTER IV.

RELATIONS OF PARTNERS TO THIRD PARTIES.

18. Subject to the provisions of this Regulation, a partner is the agent of the firm for the purposes of the business of the firm. Partner to be agent of the firm.

19. (1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. Implied authority of partner as agent of the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(*a*) submit a dispute relating to the business of the firm to arbitration,

(*b*) open a banking account on behalf of the firm in his own name,

(*c*) compromise or relinquish any claim or portion of a claim by the firm,

(*d*) withdraw a suit or proceeding filed on behalf of the firm,

(*e*) admit any liability in a suit or proceeding against the firm,

(*f*) acquire immoveable property on behalf of the firm,

(*g*) transfer immoveable property belonging to the firm, or

(*h*) enter into partnership on behalf of the firm.

20. The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Extension and restriction of partner's implied authority.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Partner's authority in an emergency.

21. A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

Mode of doing act to bind firm.

22. In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Effect of admissions by a partner.

23. An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Effect of notice to acting partner.

24. Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Liability of a partner for acts of the firm.

25. Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Liability of the firm for wrongful acts of a partner.

26. Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Liability of firm for misapplication b partners.

27. Where—

(*a*) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(*b*) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm,

the firm is liable to make good the loss.

Holding out.

28. (1) Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

(2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Rights of transferee of a partner's interest.

29. (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Minors admitted to the benefits of partnership

30. (1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48:

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm:

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.

(7) Where such person becomes a partner,—

(*a*) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(*b*) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner,—

(*a*) his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice,

(*b*) his share shall not be liable for any acts of the firm done after the date of the notice, and

(*c*) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).

(9) Nothing in sub-sections (7) and (8) shall affect the provisions of section 28.

CHAPTER V.

IN-COMING AND OUT-GOING PARTNERS.

Introduction of a partner.

31. (1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

Retirement of a partner.

32. (1) A partner may retire—

(*a*) with the consent of all the other partners,

(*b*) in accordance with an express agreement by the partners, or

(*c*) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such

third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Expulsion of a partner.

33. (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

(2) The provisions of sub-sections (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

Insolvency of a partner.

34. (1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

(2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

Liability of estate of deceased partner.

35. Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Rights of out-going partner to carry on competing business.

36. (1) An out-going partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not—

(*a*) use the firm name,

(*b*) represent himself as carrying on the business of the firm, or

(*c*) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Agreements in restraint of trade.

(2) A partner may make an agreement with his partners that on ceasing to be partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits; and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, as in force in Mysore, such agreement shall be valid if the restrictions imposed are reasonable.

Right of outgoing partner in certain cases to share subsequent profits.

37. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm:

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

Revocation of continuing guarantee by change in firm.

38. A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

CHAPTER VI.

Dissolution of a firm.

Dissolution of a firm.

39. The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm."

Dissolution by agreement.

40. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Compulsory dissolution.

41. A firm is dissolved—

(*a*) by the adjudication of all the partners or of all the partners but one as insolvent, or

(*b*) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

42. Subject to contract between the partners a firm is dissolved— Dissolution on the happening of certain contingencies.

(*a*) if constituted for a fixed term, by the expiry of that term;

(*b*) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

(*c*) by the death of a partner; and

(*d*) by the adjudication of a partner as an insolvent.

43. (*1*) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm. Dissolution by notice of partnership at will.

(*2*) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

44. At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely :— Dissolution by the Court.

(*a*) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(*b*) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;

(*c*) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;

(*d*) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;

(*e*) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1911, or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner;

(*f*) that the business of the firm cannot be carried on save at a loss; or

(*g*) on any other ground which renders it just and equitable that the firm should be dissolved.

Liability for acts of partners done after dissolution.

45. (*1*) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

2. Notices under sub-section (1) may be given by any partner.

Right of partners to have business wound up after dissolution.

46. On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

Continuing authority of partners for purposes of winding up.

47. After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

Mode of settlement of accounts between partners.

In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:—

(*a*) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(*b*) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:—

(*i*) in paying the debts of the firm to third parties;

(*ii*) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(*iii*) in paying to each partner rateably what is due to him on account of capital; and

(*iv*) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Payment of firm debts and of separate debts.

49. Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Personal profits earned after dissolution.

50. Subject to contract between the partners, the provisions of clause (*a*) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Return of premium on premature dissolution.

51. Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless—

(*a*) the dissolution is mainly due to his own misconduct, or

(*b*) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

Rights where partnership contract is rescinded for fraud or misrepresentation.

52. Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(*a*) to a lien on, or a right of retention of, the surplus, or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;

(*b*) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and

(c) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.

Right to restrain from use of firm name or firm property.

53. After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Agreements in restraint of trade.

54. Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits; and notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, as in force in Mysore, such agreement shall be valid if the restrictions imposed are reasonable.

Sale of goodwill after dissolution.

55. (1) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

Rights of buyer and seller of goodw

(2) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not—

(a) use the firm name,

(b) represent himself as carrying on the business of the firm, or

(c) solicit the custom of persons who were dealing with the firm before its dissolution.

Agreements in restraint of trade.

(3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, as in force in Mysore, such agreement shall be valid if the restrictions imposed are reasonable.

CHAPTER VII.

REGISTRATION OF FIRMS.

Power to exempt from application of this Chapter.

[**56.** The Government may, by notification in the official Gazette, direct that the provisions of this Chapter shall not apply to the whole or to any part of Mysore specified in the notification.]

Application of this Chapter.

56. *The Government may, by notification in the official Gazette, extend the provisions of this Chapter to the whole or any part of Mysore specified in the notification or cancel any such notification.*

Appointment of Registrars.

57. (1) The Government may appoint Registrars of Firms for the purposes of this Regulation, and may define the areas within which they shall exercise their powers and perform their duties.

(2) Every Registrar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code as in force in Mysore.

Application or registration.

58. (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating—

(*a*) the firm name,
(*b*) the place or principal place of business of the firm,
(*c*) the names of any other places where the firm carries on business,
(*d*) the date when each partner joined the firm,
(*e*) the names in full and permanent addresses of the partners, and
(*f*) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely :—

"Crown", "Emperor", "Empress", "Empire", "Imperial", "King", "Queen", "Royal", "Maharaja," or words expressing or implying the sanction, approval or patronage of His Highness the Maharaja or the Government, except when the Government signifies its consent to the use of such words as part of the firm name by order in writing under the hand of one of the Secretaries of the Government.

Registration.

59. When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement.

Recording of alterations in firm name and principal place of business.

60. (1) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration, and signed and verified in the manner required under section 58.

(2) When the Registrar is satisfied that the provisions of sub-section (1) have been duly complied with, he shall amend the entry relating to the firm in the Register of Firms in

accordance with the statement, and shall file it along with the statement relating to the firm filed under section 59.

Noting of closing and opening of branches.

61. When a registered firm discontinues business at any place or begins to carry on business at any place, such place not being its principal place of business, any partner or agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in the entry relating to the firm in the Register of Firms, and shall file the intimation along with the statement relating to the firm filed under section 59.

Noting of changes in names and addresses of partners.

62. When any partner in a registered firm alters his name or permanent address, an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61

Recording of changes in and dissolution of a firm.

63. (1) When a change occurs in the constitution of a registered firm, any in-coming, continuing or out-going partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under section 59.

Recording of withdrawal of a minor.

(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he or his agent specially authorised in this behalf, may give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in sub-section (1).

Rectification of mistakes.

64. (1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

(2) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.

Amendment of Register by order of Court

65. A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm which is consequential upon its decision: and the Registrar shall amend the entry accordingly.

Inspection of Register and filed documents.

66. (1) The Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed.

(2) All statements, notices and intimations filed under this Chapter shall be open to inspection subject to such conditions and on payment of such fee as may be prescribed.

Grant of copies.

67. The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

Rules of evidence.

68. (1) Any statement, intimation or notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.

(2) A certified copy of an entry relating to a firm in the Register of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.

Effect of non-registration.

69. (1) No suit to enforce a right arising from a contract or conferred by this Regulation shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—

(*a*) the enforcement of any right to use for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(*b*) the powers of a receiver or Court under the Mysore Insolvency Regulation, 1925, to realise the property of an insolvent partner.

(4) This section shall not apply—

(*a*) to firms or to partners in firms which have no place of business in Mysore, or whose places of business in Mysore are situated in areas to which, by notification under section 56, this Chapter does not apply, or

(*b*) to any suit or claim of set-off not exceeding one hundred rupees in value which, is of a kind specified in the first Schedule to the Mysore Small Cause Courts Regulation, 1911, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

Penalty for furnishing false particulars.

70. Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be

true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with *simple* imprisonment which may extend to three months, or with fine *which may extend to Rs. 500*, or with both.

Power to make rules.

71. (1) The Government may make rules prescribing the fees which shall accompany documents sent to the Registrar of Firms, or which shall be payable for the inspection of documents in the custody of the Registrar of Firms, or for copies from the Register of Firms:

Provided that such fees shall not exceed the maximum fees specified in Schedule I.

(2) The Government may make rules—

(*a*) prescribing the form of statement submitted under section 58, and of the verification thereof;

(*b*) requiring statements, intimations and notices under sections 60, 61, 62 and 63 to be in prescribed form, and prescribing the form thereof;

(*c*) prescribing the form of the Register of Firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be amended or notes made therein;

(*d*) regulating the procedure of the Registrar when disputes arise;

(*e*) regulating the filing of documents received by the Registrar;

(*f*) prescribing conditions for the inspection of original documents;

(*g*) regulating the grant of copies;

(*h*) regulating the elimination of registers and documents;

(*i*) providing for the maintenance and form of an Index to the Register of Firms; and

(*j*) generally, to carry out the purposes of this Chapter.

(3) All rules made under this section shall be subject to the condition of previous publication.

CHAPTER VIII.

SUPPLEMENTAL.

Mode of giving public notice.

72. A public notice under this Regulation is given—

(*a*) where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under section 63, and by publication in the official Gazette and in at least one vernacular

newspaper circulating in the district where the firm to which it relates has its place or principal place of business, and

(*b*) in any other case, by publication in the official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

Repeals.

73. The enactments mentioned in Schedule II are hereby repealed to the extent specified in the fourth column thereof.

Savings.

74. Nothing in this Regulation or any repeal effected thereby shall affect or be deemed to affect—

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Regulation, or

(*b*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Regulation, or

(*c*) anything done or suffered before the commencement of this Regulation, or

(*d*) any enactment relating to partnership not expressly repealed by this Regulation, or

(*e*) any rule of insolvency relating to partnership,or

(*f*) any rule of law not inconsistent with this Regulation.

SCHEDULE I.

MAXIMUM FEES.

[*See* sub-section (*1*) of section 71.]

Document or act in respect of which the fee is payable	Maximum fee
Statement under section 58	Three rupees.
Statement under section 60	One rupee.
Intimation under section 61	One rupee.
Intimation under section 62	One rupee
Notice under section 63	One rupee.
Application under section 64	One rupee.
Inspection of the Register of Firms under sub-section (1) of section 66.	Eight annas for inspecting one volume of the Register.
Inspection of documents relating to a firm under sub-section (2) of section 66.	Eight annas for the inspection of all documents relating to one firm.
Copies from the Register of firms	Four annas for each hundred words or part thereof.

PARTNERSHIP BILL.

The motions may be approved.

Clause ~~Section~~ 1 extends the Regulation to the whole of the State from the date on which it comes into force. ~~By Section~~ Clause 56 as amended by the Select Committee ~~it is~~ intended that Chapter VII should apply only after Government notification to such portions of the State and from such date as ~~the Government may notify~~ Government notification. In order that there may not be an apparent conflict between ~~Section~~ Clause 1 and ~~Section~~ 56, it ~~seems to be~~ is necessary to add the words "AND THE SAID PROVISIONS SHALL NOT APPLY UNLESS SO EXTENDED" at the end of Section 56.

***

Acts
D. 1936

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

Order No. P851 Legis 10-36 Dated Bangalore, 31st July 1936

Ordered that the accompanying Regulation to declare and amend the law relating to partnership which received the assent of His Highness the Maharaja, on the fourteenth day of July 1936 be published as Regulation No. VI of 1936 in the Mysore Gazette for general information.

Secretary to Government,
~~Local and Legislative Departments~~

To--The Compiler, Mysore Gazette, for publication in Part ~~III~~ IV of the Gazette, in English and Kannada and for supply of spare copies in English and Kannada as per standing orders. Proofs should be sent to this office for approval before publication.

Copy to Translations Branch

REGULATION VI OF 1936.

(Received the assent of His Highness the Maharaja on the fourteenth day of July 1936.)

Regulation to define and amend the Law relating to Partnership.

Price 0-1-9.

NOTIFICATION.

Order No. P. 851—Legis. 10-36-1, dated 31st July 1936.

Ordered that the accompanying Regulation to define and amend the law relating to partnership which received the assent of His Highness the Maharaja on the fourteenth day of July 1936 be published as Regulation No. VI of 1936 in the *Mysore Gazette* for general information.

M. VENKATESA IYENGAR,
Secretary to Government,
General Department.

REGULATION VI OF 1936.

(Received the assent of High Highness the Maharaja on the fourteenth day of July 1936.)

Regulation to define and amend the Law relating to Partnership.

Whereas it is expedient to define and amend the law relating to partnership; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Regulation may be called the Mysore Partnership Regulation, 1936.

(2) It extends to the whole of Mysore.

(3) It shall come into force on 1st day of January 1937.

Definitions.

2. In this Regulation unless there is anything repugnant in the subject or context,—

(*a*) an "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;

(*b*) "business" includes every trade, occupation and profession;

(*c*) "prescribed" means prescribed by rules made under this Regulation;

(*d*) "third party" used in relation to a firm or to a partner therein means any person who is not a partner in the firm; and

(*e*) expression used but not defined in this Regulation and defined in the Indian Contract Act, 1872, as in force in Mysore, shall have the meanings assigned to them in that Act.

Application of provisions of Act IX of 1872 as in force in Mysore.

3. The unrepealed provisions of the Indian Contract Act, 1872, as in force in Mysore, save in so far as they are inconsistent with the express provisions of this Regulation, shall continue to apply to firms.

CHAPTER II.

THE NATURE OF PARTNERSHIP.

Definition of "partnership." "partner," "firm" and "firm name."

4. "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm," and the name under which their business is carried on is called the "firm name."

Partnership not created by status

5. The relation of partnership arises from contract and not from status;

and, in particular, the members of a Hindu undivided family carrying on a family business as such, are not partners in such business.

Mode of determining existence of partnership.

6. In determining whether a group of persons is or is not a firm or whether a person is or is not a partner in

a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Explanation 1.—The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation 2.—The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business,

and, in particular, the receipt of such share or payment—

(*a*) by a lender of money to persons engaged or about to engage in any business.

(*b*) by a servant or agent as remuneration,

(*c*) by the widow or child of a deceased partner, as annuity, or

(*d*) by a previous owner or part-owner of the business, as consideration for the sale of the goodwill or share thereof,

does not of itself make the receiver a partner with the persons carrying on the business.

Partnership at will.

7. Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will".

Particular partnership

8. A person may become a partner with another person in particular adventures or undertakings.

CHAPTER III.

Relations of partners to one another.

General duties of partners.

9. Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

Duty to indemnify for loss caused by fraud.

10. Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Determination of rights and duties of partners by contract between the partners.

11. (1) Subject to the provisions of this Regulation, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.

Agreements in restraint of trade.

(2) Notwithstanding anything contained in Section 27 of the Indian Contract Act, 1872, as in force in Mysore such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

The conduct of the business.

12. Subject to contract between the partners—

(*a*) every partner has a right to take part in the conduct of the business;

(*b*) every partner is bound to attend diligently to his duties in the conduct of the business:

(*c*) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners; and

(*d*) every partner has a right to have access to and to inspect and copy any of the books of the firm.

Mutual rights and liabilities.

13. Subject to contract between the partners—

(*a*) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

(*b*) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;

(*c*) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;

(*d*) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has ageed to subscribe, is entitled to interest thereon at the rate of six per cent per annum.

(*e*) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him—

(i) in the ordinary and proper conduct of the business, and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances ; and

(*f*) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

The property of the firm.

14. Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

Application of the property of the firm.

15. Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

Personal profits earned by partners.

16. Subject to contract between the partners,—

(*a*) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm ;

(*b*) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

17. Subject to contract between the partners,—

Rights and duties of partners after a change in the firm.

(*a*) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be ;

After the expiry of the term of the firm, and

(*b*) where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry so far as they may be consistent with the incidents of partnership at will; and

Where additional undertakings are carried out.

(*c*) where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

CHAPTER IV.

RELATIONS OF PARTNERS TO THIRD PARTIES.

Partner to be agent of the firm.

18. Subject to the provisions of this Regulation, a partner is the agent of the firm for the purpose of the business of the firm.

Implied authority of partner as agent of the firm.

19. (1) Subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(*a*) submit a dispute relating to the business of the firm to arbitration,

(*b*) open a banking account on behalf of the firm in his own name,

(*c*) compromise or relinquish any claim or portion of a claim by the firm.

(*d*) withdraw a suit or proceeding filed on behalf of the firm,

(*e*) admit any liability in a suit or proceeding against the firm,

(*f*) acquire immoveable property on behalf of the firm,

(*g*) transfer immoveable property belonging to the firm or,

(*h*) enter into partnership on behalf of the firm.

Extension and restriction of partner's implied authority.

20. The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Partner's authority in an emergency.

21. A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

Mode of doing act to bind firm.

22. In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Effect of admissions by a partner.

23. An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Effect of notice to acting partner.

24. Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Liability of a partner for acts of the firm.

25. Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Liability of the firm for wrongful acts of a partner.

26. Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Liability of firm for misapplication by partners.

27. Where—

(*a*) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(*b*) a firm in the course of its business receives money or property from a third party, and the

money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Holding out.

28. (1) Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

(2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Rights of transferee of a partner's interest.

29 (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Minors admitted to the benefits of partnership.

30. (1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in Section 48:

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm:

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.

(7) Where such person becomes a partner,—

(*a*) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(*b*) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner,—

(*a*) his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice,

(*b*) his share shall not be liable for any acts of the firm done after the date of the notice, and

(*c*) he shall be entitled to sue the partners for his share of the property and profits in accordance with Sub-section (4).

(9) Nothing in Sub-sections (7) and (8) shall affect the provisions of Section 28.

CHAPTER V.

IN-COMING AND OUT-GOING PARTNERS.

Introduction of a partner.

31. (1) Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of Section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

Retirement of a partner.

32. (1) A partner may retire—

(*a*) with the consent of all the other partners,

(*b*) in accordance with an express agreement by the partners, or

(*c*) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under Sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Expulsion of a partner.

33. (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

(2) The provisions of Sub-sections (2), (3) and (4) of Section 32 shall apply to an expelled partner as if he were a retired partner.

Insolvency of a partner.

34. (1) Where a partner in a firm is a adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

(2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

Liability of estate of deceased partner.

35. Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Rights of out-going partner to carry on competing business.

36. (1) An out-going partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not—

(*a*) use the firm name,

(*b*) represent himself as carrying on the business of the firm, or

(*c*) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Agreements in restraint of trade.

(2) A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits; and, notwithstanding anything contained in Section 27 of the Indian Contract Act, 1872, as in force in Mysore, such agreement shall be valid if the restrictions imposed are reasonable.

Rights of out-going partner in certain cases to share subsequent profits.

37. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the out-going partner or his estate, then, in the absence of a contract to the contrary, the out-going partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm :

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or out-going partner, and that option is duly exercised, the estate of the deceased partner, or the out-going partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

Revocation of continuing guarantee by change in firm.

38. A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

CHAPTER VI.

Dissolution of a firm.

Dissolution of a firm.

39. The dissolution of partnership between all the partners of a firm is called the " dissolution of the firm."

Dissolution by agreement.

40. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Compulsory dissolution.

41. A firm is dissolved—

(*a*) by the adjudication of all the partners or of all the partners but one as insolvent, or

(*b*) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership :

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Dissolution on the happening of certain contingencies.

42. Subject to contract between the partners a firm is dissolved—

(*a*) if constituted for a fixed term, by the expiry of that term;

(*b*) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

(*c*) by the death of a partner; and

(*d*) by the adjudication of a partner as an insolvent.

Dissolution by notice of partnership at will.

43. (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

Dissolution by the Court.

44. At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:—

(*a*) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(*b*) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;

(*c*) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;

(*d*) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;

(*e*) that a partner, other the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of Rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1911, or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner;

(*f*) that the business of the firm cannot be carried on save at a loss; or

(*g*) on any other ground which renders it just and equitable that the firm should be dissolved.

Liability for acts of partners done after dissolution.

45. (1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under Sub-section (1) may be given by any partner.

Right of partners to have business wound up after dissolution.

46. On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

Continuing authority of partners for purposes of winding up.

47. After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

48. In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed :— Mode of settlement of accounts between partners.

(*a*) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(*b*) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order :—

(i) in paying the debts of the firm to third parties;

(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(iii) in paying to each partner rateably what is due to him on account of capital; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

49. Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm. Payment of firm debts and of separate debts.

50. Subject to contract between the partners, the provisions of Clause (*a*) of Section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up: Personal profits earned after dissolution.

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

51. Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the Return of premium on premature dissolution.

death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless—

(*a*) the dissolution is mainly due to his own misconduct, or

(*b*) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

Rights where partnership contract is rescinded for fraud or misrepresentation.

52. Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is, without prejudice to any other right entitled—

(*a*) to a lien on, or a right of retention of, the surplus, or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;

(*b*) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and

(*c*) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts to the firm.

Right to restraint from use of firm name or firm property.

53. After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Agreements in restrain of trade.

54. Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits; and notwithstanding anything contained in Section 27 of the Indian Contract Act, 1872, as in force in Mysore,

such agreement shall be valid if the restrictions imposed are reasonable.

Sale of good-will after dissolution.

55. (1) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

Rights of buyer and seller of goodwill.

(2) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not—

(*a*) use the firm name,
(*b*) represent himself as carrying on the business of the firm, or
(*c*) solicit the custom of persons who were dealing with the firm before its dissolution.

Agreements in restraint of trade.

(3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in Section 27 of the Indian Contract Act, 1872, as in force in Mysore, such agreement shall be valid if the restrictions imposed are reasonable.

CHAPTER VII.

Registration of firms.

Application of this Chapter.

56. The Government may, by notification in the official Gezette, extend the provisions of this Chapter to the whole or any part of Mysore specified in the notification or cancel any such notification and the said provisions shall not apply unless so extended.

Appointment of Registrars.

57. (1) The Government may appoint Registrars of Firms for the purposes of this Regulation, and may define the areas within which they shall exercise their powers and perform their duties.

(2) Every Registrar shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code as in force in Mysore.

Application for registration.

58. (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is

situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating—

(*a*) the firm name.
(*b*) the place or principal place of business of the firm,
(*c*) the names of any other places where the firm carries on business,
(*d*) the date when each partner joined the firm,
(*e*) the names in full and permanent addresses of the partners, and
(*f*) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely :—

"Crown", "Emperor", "Empress", "Empire" "Imperial", "King", "Queen", "Royal" "Maharaja," or words expressing or implying the sanction, approval or patronage of His Highness the Maharaja or the Government except when the Government as signifies its consent to the use of such words as part of the firm name by order in writing under the hand of one of the Secretaries of the Government.

Registration.

59. When the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement.

Recording of alterations in firm name and principal place of business.

60. (1) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration, and signed and verified in the manner required under Section 58.

(2) When the Registrar is satisfied that the provisions of Sub-section (1) have been duly complied with, he shall amend the entry relating to the firm in the Register of Firms in accordance with the statement and shall file it along with the statement relating to the firm filed under Section 59.

Noting of closing and opening of branches.

61. When a registered firm discontinues business at any place or begins to carry on business at any place, such place not being its principal place of business, any partner or agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in the entry relating to the firm in the Register of Firms, and shall file the intimation along with the statement relating to the firm filed under Section 59.

Noting of changes in names and addresses of partners.

62. When any partner in a registered firm alters his name or permanent address, an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in Section 61.

Recording of changes in and dissolution of a firm.

63. (1) When a change occurs in the constitution of a registered firm, any in-coming, continuing or out-going partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under Section 59.

Recording of withdrawal of a minor.

(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he or his agent specially authorised in this behalf, may give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in Sub-section (1).

Rectification of mistakes.

64. (1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

(2) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.

Admendment of Register by order of Court.

65. A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms

relating to such firm which is consequential upon its decision; and the Registrar shall amend the entry accordingly.

Inspection of Register and filed documents.

66. (1) The Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed.

(2) All statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and on payment of such fee as may be prescribed.

Grant of copies.

67. The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

Rules of evidence.

68. (1) Any statement, intimation or notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.

(2) A certified copy of an entry relating to a firm in the Register of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.

Effect of non-registration.

69. (1) No suit to enforce a right arising from a contract or conferred by this Regulation shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of Sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—

(*a*) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(*b*) the powers of a receiver or Court under the Mysore Insolvency Regulation, 1925, to realise the property of an insolvent partner.

(4) This section shall not apply—

(*a*) to firms or to partners in firms which have no place of business in Mysore, or whose places of business in Mysore are situated in areas to which, by notification under Section 56, this Chapter does not apply, or

(*b*) to any suit or claim of set-off not exceeding one hundred rupees in value which is of a kind specified in the first Schedule to the Mysore Small Cause Courts Regulation, 1911, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

Penalty for furnishing false particulars.

70. Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with simple imprisonment which may extend to three months, or with fine which may extend to Rs. 500, or with both.

Power to make rules.

71. (1) The Government may make rules prescribing the fees which shall accompany documents sent to the Registrar of Firms, or which shall be payable for the inspection of documents in the custody of the Registrar of Firms, or for copies from the Register of Firms:

Provided that such fees shall not exceed the maximum fees specified in Schedule I.

(2) The Government may make rules—

(*a*) prescribing the form of statement submitted under Section 58, and of the verification thereof;

(*b*) requiring statements, intimations and notices under Sections 60, 61, 62 and 63 to be in prescribed form, and prescribing the form thereof;

(*c*) prescribing the form of the Register of Firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be amended or notes made therein;

(*d*) regulating the procedure of the Registrar when disputes arise;

(*e*) regulating the filing of documents received by the Registrar;

(*f*) prescribing conditions for the inspection of original documents;

(*g*) regulating the grant of copies;

(*h*) regulating the elimination of registers and documents;

(*i*) providing for the maintenance and form of an Index to the Register of Firms; and

(*j*) generally, to carry out the purposes of this Chapter.

(3) All rules made under this section shall be subject to the condition of previous publication.

CHAPTER VIII.

SUPPLEMENTAL.

Mode of giving public notice.

72. A public notice under this Regulation is given—

(*a*) where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under Section 63, and by publication in the official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business, and

(*b*) in any other case, by publication in the official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

Repeals.

73. The enactments mentioned in Schedule II are hereby repealed to the extent specified in the fourth column thereof.

74. Nothing in this Regulation or any repeal effected thereby shall affect or be deemed to affect— Savings

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Regulation, or

(*b*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liabilities or anything done or suffered before the commencement of this Regulation, or

(*c*) anything done or suffered before the commencement of this Regulation, or

(*d*) any enactment relating to partnership not expressly repealed by this Regulation, or

(*e*) any rule of insolvency relating to partnership, or

(*f*) any rule of law not inconsistent with this Regulation.

SCHEDULE I.

MAXIMUM FEES.

[See Sub-section (1) of Section 71.]

Document or act in respect of which the fee is payable	Maximum fee
Statement under Section 58	Three rupees.
Statement under Section 60	One rupee.
Intimation under Section 61	One rupee.
Intimation under Section 62	One rupee.
Notice under Section 63	One rupee.
Application under Section 64	One rupee.
Inspection of the Register of Firms under Sub-section (1) of Section 66.	Eight annas for inspecting one volume of the Register.
Inspection of documents relating to a firm under Sub-section (2) of Section 66.	Eight annas for the inspection of all documents relating to one firm.
Copies from the Register of Firms	Four annas for each hundred words or part thereof.

SCHEDULE II.

ENACTMENTS REPEALED.

(*See* Section 73

Year	No.	Short title	Extent of repeal
1	2	3	4
1872	IX	The Indian Contract Act, 1872.	Exceptions 2 and 3 to Section 27. The whole of Chapter XI.

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